THE ROMAN CATHOLIC CHURCH IN THE MODERN STATE

CHARLES C. MARSHALL

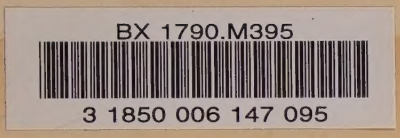
BX
1790
.M395

Marshall
The Roman Catholic church in the modern state

Kent State University Libraries
Kent, Ohio

DEMCO

WITHDRAWN FROM KENT STATE
UNIVERSITY LIBRARIES


BX 1790.M395
3 1850 006 147 095

THE ROMAN CATHOLIC CHURCH IN THE MODERN STATE

The ROMAN CATHOLIC CHURCH IN THE MODERN STATE

BY

CHARLES C. MARSHALL

DODD, MEAD AND COMPANY
NEW YORK 1928

COPYRIGHT, 1928
BY DODD, MEAD AND COMPANY, INC.

Published April, 1928
Second Printing October, 1928

PRINTED IN U. S. A.

MANUFACTURED IN THE UNITED STATES OF AMERICA
BY THE VAIL-BALLOU PRESS, INC., BINGHAMTON, N. Y.

ERRATA

p. 16, line 12 after "source" read "or medium"
58 23 after "Honor" read "which, separated from the Primacy of Jurisdiction,"
68 6 for "jurisdiction" read "supremacy"
104 9 for "a refusal to acknowledge" read "the recognition of"
138 27 for "freedom of" read "freedom from"
150 add to note 9, as follows: "Of his mission no power can deprive him but his jurisdiction or exercise of it is wholly subject to the Pope."
169, line 4 for "negation" read "antithesis"
5 strike out "has immutability except as it"
206 8–9 for "a power" read "an authority"
211 20 for "freedom of" read "freedom from"
220 15 after "superior to" read "that of"
221 n. 27, line 5 after "superior to" read "those of"
232, line 31 for "favors" read "dispensations"
248 24 for "both" read "at once"
277 9 after "source" read "or medium"

To

ALL THOSE WHO

WITH INTREPID SPIRIT HAVE PREFERRED THE

TREASON OF TRUTH

TO THE

LOYALTY OF ERROR

CONTENTS

		PAGE
	TABLE OF ABBREVIATIONS	ix
	PREFACE TO SECOND EDITION	xi
	INTRODUCTORY NOTE	xxiii
CHAPTER		
I	POLITICS AND RELIGION	1
II	SOVEREIGNTY IN THE CHURCH OF ROME	15
III	THE ROMAN CATHOLIC CHURCH IN THE MODERN STATE	38
IV	THE CONSTITUTION *PASTOR ÆTERNUS*	57
V	THE *SYLLABUS* OF POPE PIUS IX	76
VI	THE ENCYCLICAL LETTER *IMMORTALE DEI*	88
VII	ROMAN CATHOLIC COMMENT ON THE ENCYCLICAL LETTER *IMMORTALE DEI*	114
VIII	DEMOCRACY IN THE LAW AND GOVERNMENT OF THE CHURCH OF ROME	148
IX	FREEDOM OF CONSCIENCE AND TOLERATION	181
X	THE TWILIGHT ZONE OF CARDINAL GIBBONS	198
XI	THE TWILIGHT ZONE OF INHERENT RIGHTS	211
XII	THE TWILIGHT ZONE OF MARRIAGE	223
XIII	THE TWILIGHT ZONE OF POLITICS	244
XIV	THE TWILIGHT ZONE OF EDUCATION	258
	POSTSCRIPT	279
APPENDIX I	THE CONSTITUTION *PASTOR ÆTERNUS*	281
APPENDIX II	THE *SYLLABUS* OF POPE PIUS IX	292
APPENDIX III	THE ENCYCLICAL LETTER *IMMORTALE DEI*	304
	LIST OF AUTHORS AND EDITIONS OF BOOKS REFERRED TO	331
	INDEX	341

TABLE OF ABBREVIATIONS

(For complete list of authors referred to *vide infra* pp. 331–339)

Acton, *History:* J. E. E. D. Acton, First Baron Acton, *The History of Freedom and Other Essays.*

Acton, *Correspondence: Selections from the Correspondence of the First Lord Acton.*

Bryce: J. Bryce, *The Holy Roman Empire.*

Carlyle: R. W. and A. J. Carlyle, *A History of Mediæval Political Theory in the West.*

C. E.: *The Catholic Encyclopedia.*

Dunning: W. A. Dunning, *A History of Political Theories;* vol. i, Ancient and Mediæval; vol. ii, From Luther to Montesquieu.

Emerton: E. Emerton, *The Defensor Pacis of Marsiglio of Padua.*

E. B.: *Encyclopædia Britannica.*

G. E. L.: *The Great Encyclical Letters of Pope Leo XIII.*

Janus: Janus (Dr. J. J. I. von Döllinger), *The Pope and the Council.*

Laski, *Authority:* H. J. Laski, *Authority in the Modern State.*

Laski, *Foundations:* H. J. Laski, *The Foundations of Sovereignty and Other Essays.*

Laski, *Studies:* H. J. Laski, *Studies in the Problem of Sovereignty.*

Manning, *Sermons:* H. E. Cardinal Manning, *Sermons on Ecclesiastical Subjects.*

Woywod: S. Woywod, *A Practical Commentary on the Code of Canon Law.*

PREFACE TO SECOND EDITION

The publication of this edition permits a few comments in reply to criticisms which have appeared from time to time in the reviews.

THE SUPREMACY OF CONSCIENCE

It is said that I advocate the moral supremacy of the State, with all the Hegelian and Austinian features, and even that I regard the Russian development as a triumph of moral idealism. There is not a page in my book which sustains these conclusions. It is true that I acknowledge the legal, *de facto* control, often designated "moral supremacy," of the State [1] over moral conduct, but I postulate the right to the moral freedom or independence of the individual conscience. That conscience, though supreme in moral right, is of necessity subject *de facto*, by the inherent nature of human society, to the collective moral sense or conscience, of the civic community or State, expressed as law. It is by the *de facto* operation of this collective conscience in the State that anarchy, as a rule, is

[1] The term "State" necessarily includes both the people and the government created by them. The government in the modern State is not supreme or omnipotent, for it is wholly subject to creation and determination at all points by the people in the exercise of their civic supremacy. The State combining both the government and the people has its omnipotence only in the civic primacy of the latter.

prevented, although the collective conscience may carry the State at times to anarchy.

This uncertainty in the eventualities resulting from the exercise of the collective conscience is used to support the argument of Roman Catholics in favor of the moral supremacy of their Church under the Pope in his Divine and supernatural right, supreme and infallible in moral determination because Divine and supernatural; but the argument is annihilated by the fact that the Church and the Pope have, at times, carried Western civilization to moral anarchy, and that restoration to order has been accomplished only by the intervention of the State, and the moral constraint exercised by it on the Popes.

The philosophy and constitution of the Roman Catholic Church set up the moral supremacy of the Pope as supreme in theory over the conscience of the individual, and over the collective conscience of the State. That Church claims that the moral standard is determined and declared in virtue of the supremacy and the infallibility of the Pope; the modern State claims that it is determined and declared in virtue of the collective conscience of the civic community or State under conditions of the freedom of the individual conscience acting in the light of reason and experience. To the Roman Catholic consciousness there is present what is unknown to the consciousness of the rest of the world, to wit: a verifiable, visible, tangible and universal authority in respect to moral truth and the validity of political authority, and a supreme and infallible organ for the declaration thereof. The conflict between the Roman Catholic Church and the

modern State would seem, therefore, to be very clear.

In order to escape the horrors of the sovereign Hegelian State, mankind need not take refuge in the horrors of the sovereign Roman Church. There is a refuge from each in the sure fastnesses of the sovereignty of conscience [2]—a sovereignty that may involve some martyrdom at the hands of both civic and ecclesiastical authorities, but, in the law of God, martyrdom under either is not the defeat but the triumph of conscience.

As to the menace of anarchy: It is to be observed that nothing can lead more precipitately to anarchy in the modern State than the insistence by the Roman Catholic Church that its members must renounce that freedom of the individual conscience on which the modern State rests, and accept in lieu of it the supremacy, in matters belonging to morals, of the Papal government at Rome whenever, in the judgment of the Pope, the claims of the State conflict with the claims of the Papal government. Such insistence by the Roman Catholic Church has more than once proven to be the hotbed of anarchy in the State.

The conclusion is inevitable that Roman Catholic citizens are radically differentiated from all others in their relation to the social and political complex of life in the American or modern State. The Roman Catholic solidarity in the State cannot be a valid part of the collective conscience, or consensus of moral opinion, on which the civic order of the State depends,

2 What independence is allowed of right by the doctrine of the Roman Church to the individual conscience as against Papal supremacy and infallibility will be found set forth at pp. 20–21 *infra*.

for that collective conscience or consensus, to be valid, must be arrived at under the freedom of the individual conscience. Roman Catholics are not free in conscience because of their subordination, under the penalty of damnation, in matters belonging to morals to the supremacy and infallibility of the Pope in his Divine right.

It may be that the facts which I present support in reason the position of the State in the modern world in respect to religion and the Roman Catholic Church, but I have at no point intended to argue to conclusion in regard to the claims of either party to the controversy, limiting my work to the disclosure of those considerations which lead to the existing antagonism between the Church of Rome and the State. The modern State is obviously in dire need of the aid of the contribution of every valid instrumentality for the dispensation of the pure Gospel of the Son of God.

It is not my purpose to disparage the just, historic and rational claims of the Roman Church and of the Papacy to the consideration of the world. Mankind might do well to listen to, and to heed, the venerable voice of the most ancient of Christian Sees expressing the collective wisdom of the Latin Church, if it could hear in the freedom of conscience and act in the freedom of the will. But in the way of such a consummation the Roman Catholic Church, by coupling with the acceptance of its moral teaching the acceptance *de fide* and in Divine right of the supernatural supremacy and infallibility of the Pope, has imposed an insuperable obstacle. The Bishop of Rome is no longer the venerable Pastor and Patriarch of the Western world,

speaking in the right of human prescription and tradition; he is no longer the Pope of the early centuries. He is in his claims the Supreme Pontiff, holding "upon this earth the place of God Almighty," and incontestable in Divine right.

THE IDEAL STATE

My presentation of authoritative Roman Catholic pronouncements, both doctrinal and dogmatic, asserting the supremacy of the Roman Catholic Church over the State at all vital moral points, the validity of its doctrine of the union of that Church and the State, the duty of the State to proscribe all other religious bodies as heretical, and the inherent right of the Roman Catholic Church over education and other subjects, has been met by the rejoinder that the doctrines have application only to an ideal State which at present does not exist. The ideal State is defined by Roman Catholics as one whose population is substantially Roman Catholic, or one in which the Roman Catholic religion "is recognized and adopted by the vast majority of the citizens."

I deny that the rejoinder is in any way apposite. Too great a strain is put upon human credulity when men are asked to believe that the authorities of the Roman Church are setting forth doctrines in the textbooks of its schools and in its manuals of instruction, and that the Popes are proclaiming doctrines and dogmas in their Encyclicals and decrees, which have no application to any existing State. The fact is obvious that the doctrines in question apply, and, I repeat, are

intended to apply, in every State where there is a Roman Catholic solidarity, in proportion to the numerical strength of that solidarity. If such were not the case, the slogan "Make America Catholic" would never have been raised.

But the doctrines alluded to are indefensible in the modern State if there is even one citizen who is not a Roman Catholic, for in theory that State insists upon a standard of right and of religious liberty that shall accommodate every citizen, even including that one.

There is some truth in the paradox that even in a State where every citizen is a Roman Catholic the doctrines alluded to cannot be morally justified, however they might be imposed *de facto*, for the reason that successive generations of children entitled to freedom of conscience are prejudiced thereby, from their earliest days, with disastrous consequences to civilization. Burke was right when he said that "civilization is a contract between the great dead, the living and the unborn." The State is an integral part of civilization and the unborn are, in theory, entitled to its protection against the pernicious theories of older generations.

THE CIVIC OATH

Protestant opinion, commenting on the words of the Rev. Dr. Pohle, quoted by the Hon. Alfred E. Smith in his *Atlantic Monthly* letter (see p. 44 *infra*), holds that I do not give due consideration to the grave question of the binding force of oath by Roman Catholics in relation to matters in which the doctrine of their Church conflicts with the doctrine of the State.

Governor Smith's quotation from Dr. Pohle is as follows:

"If religious freedom has been accepted and sworn to as a fundamental law in a constitution, the obligation to show this tolerance is binding on conscience."

At p. 141 *infra* I have referred at length to statements by the Rev. John A. Ryan in his work on *The State and The Church*. He holds (p. 47 of his book) to the notion of a Church with "the right to determine when a State ordinance is out of harmony with the ordinances of religion and morality, and the right to refuse obedience to civil regulations which were found to be of this character." Dr. Ryan also holds (p. 46 of his book) the principle that" . . . the (Roman) Church, as the guardian and authoritative interpreter of the moral law, has as much right to pronounce upon the morality of political actions and relations as upon the morality of the actions and relations of private societies and individuals." The right to pronounce upon the morality of private individuals does not exist in the membership of that Church but is vested in the alien sovereignty of the Pope under his prerogative of supremacy and infallibility, and obedience to him is commanded under the penalty of damnation. It is clear, therefore, that the right of that Church to pronounce by the Pope on the morality of political actions and relations is supreme. Swearing to religious freedom as a fundamental law in a constitution is a political action, and the relations established are political relations. It would seem, therefore, that where religious freedom in the constitution has been accepted and

sworn to, the oath is not binding on the conscience of Roman Catholics if their Church by the Pope teaches that the constitutional obligation sworn to—to support religious liberty—is out of harmony with its ordinances of religion and morality, *i. e.*, morally wrong. Does that Church so teach? I hold that it does, and that it so teaches as a matter of objective truth. It is fundamental in all morals that an oath to do a thing that is morally wrong is not binding on conscience. Any citizen may morally refuse to keep an oath to do that which he is subsequently convinced is morally wrong. The only question in the modern State is whether the moral determination in respect to civic oaths shall rest in the free conscience of the citizen, functioning in the free collective consensus, in accord with the civic order of the State, or in a conscience subordinated to the Pope's foreign jurisdiction, functioning in the collective consensus of a Roman Catholic solidarity so subordinated, and, therefore, in conflict with the civic order of the State.

RETROACTIVE LEGISLATION OVER MORALS AND HISTORY

My statement at p. 70, that the Constitution *Pastor Æternus* in the Vatican Conciliar decrees of 1870, is, in terms, a piece of retroactive legislation over morals and history, has been pronounced absurd, but I have seen no argument against my conclusion.

It is Roman Catholic doctrine that Papal supremacy and infallibility, defined in 1870 in the Constitution *Pastor Æternus* as requiring obedience to the Pope in

matters belonging to faith and morals under penalty of damnation, were prerogatives of the Pope by Christ's institution from the beginning, but they were not known to the Church, nor defined as *de fide*, until 1870. It cannot be denied that before 1870 the Christian world was unconscious of the obedience so required. When in the eleventh century Pope Urban II taught that the killing of excommunicated persons was not murder if done from religious zeal only, it would seem clear that those who may have persisted in regarding it as murder violated in fact the Divine law (existing but unknown because not defined until 1870) requiring obedience to Pope Urban's teaching at the time in moral matters. Their ignorance, or unconsciousness, relieved them, it is true, of the penalty of damnation, but they had in fact transgressed a Divine law though they did not know it, nor did anyone else know it for eight hundred years, *i. e.*, not until 1870. The effect of the decrees of 1870 are therefore, I submit, retroactive over morals and over history.

It will be said that Roman Catholics today are not required to obey the moral teaching of Pope Urban under his prerogative of supremacy, but I submit they are required to believe *now* that his teaching was valid *then* in the Divine order. And I say it is monstrous that such teaching should, at any time or for any souls, be regarded as valid in the Divine order, or in accordance with the mind and will of Jesus Christ.

"THE GUTTERS OF HISTORY"

I deeply regret that my plain reference (necessary in my opinion to my argument) to certain undisputed

occurrences in history, discreditable to the Church and to the Papacy, should have been met by intemperate abuse from Roman Catholic critics. The occurrences were referred to in support of the very rational claim that the government of the Church, like that of the State, has fallen at times into degradation and iniquity, and that the State has at times had to constrain the Church and the Popes themselves to the path of decency and moral rectitude, and, on the other hand, that, in the degradation and iniquity at times of the State, the Church has had to constrain the State in a corresponding manner. My argument, in the use of the instances in question, has been described by an eminent member of the Paulist Fathers, in a pamphlet pronounced reliable by *The Commonweal*, as departing from the standards of a gentleman, and as studiously raking up from the gutters of history the muck of past scandals in an effort to throw dust in the eyes of my readers. My desire has been to show respect for the feelings of Roman Catholics, and all others, in regard to religious convictions, but I decline to respect the padlock placed by *The Commonweal* and the Paulist Fathers on the door of history.

THE STATE OF MEXICO AND THE CHURCH OF ROME

I have referred *in extenso* to the religious situation in Mexico and have been accused, in spite of my earnest disclaimer, of approving the outrages inflicted in Mexico upon the Church of Rome and its members. It is true that I am not able to condemn or approve unqualifiedly the course of the Mexican State in re-

spect to the Roman Church in its midst, but how, I ask, can one so condemn the course of that State when the Church of Rome, embracing in nominal membership nearly the whole of the Mexican population, asserts, in its philosophy and constitution, its supremacy over the Mexican State in all matters belonging to morals as defined by the Pope, and when the assertion by the Pope in 1856 of his sovereign right to annul the laws of Mexico adverse to the Church remains unrepudiated by the Pope in 1928. It is the claims of the Roman Church to supremacy in Divine right over the Mexican State and over the consciences of Mexicans, and nothing else, that has sealed the lips of the civilized world alike against unqualified sympathy for the Church and against unqualified condemnation for the Mexican State.

THE MARLBOROUGH AND MARCONI ANNULMENTS

In my references to the Marlborough and Marconi annulments there is no intent to show that the findings of the Rota were not in harmony with the law of the Roman Church. I concede that the provisions of the civil law of contract relating to estoppel and providing against fraud are unknown to the Roman Catholic law of marriage. My reference to the cases in question is made only to support the claim, which I should suppose all Roman Catholics admit, that the laws governing the contract of marriage in the Roman Church differ radically from the laws of the State, and that the difference furnishes one of the grounds for that antagonism between them which it is the particular

purpose of this book to disclose. Concerning the moral consequences to society of the decisions in the two cases there will be a difference of opinion, and I cannot in good conscience conceal my own opinion that those consequences are profoundly regrettable.

The two episodes stand out in sinister significance when viewed in the light of subsequent facts. Signor Marconi, shortly after his annulment, was married with all the rites of the Church to a Roman Catholic lady. The Duke of Marlborough, shortly after his annulment, announced his conversion to Rome, and when the drama closed the world beheld him at a great ceremony supporting with the prestige of an English Dukedom the throne of the Cardinal Archbishop at Westminster.

THE POPE'S RESPONSIBILITY TO GOD

In my closing paragraph there is a reference to the "Primacy of a Sovereign Pope, which holds itself responsible to no one." I have been admonished that I should have said, "responsible to no one but God." I admit with all respect that the Pope, under the constitution of the Roman Catholic Church, does indeed hold himself, in theory, responsible to God, but by all the pages of history and by all the experience of mankind I deny that he has been able to hold himself in fact responsible to God. It is by reason of this inherent human limitation of the Pope that the validity of Papal sovereignty in Divine right over the moral life of man falls to the ground.

CHARLES C. MARSHALL

October 15, 1928.

INTRODUCTORY NOTE

I. The writer of this book is profoundly conscious of the difficulties of his subject and appreciates that, while it is found for the most part within the domain of the law and political science, it must occasionally lead toward, if not into, the more difficult provinces of theology and ecclesiastical history. He is conscious of the presumption that will be imputed to an adventure, however discreet, by a layman in that direction, but if the institutional relation of the Roman Catholic Church to the modern State is to be examined there is no alternative. That Church asserts, as an integral part of its faith, a moral and religious sovereignty, the exercise of which from time to time draws civic rights and interests within its alleged jurisdiction, and the citizen who would acquaint himself with the real situation must pursue his inquiries within ecclesiastical lines with such resources as may be at his command. It cannot be justly claimed that subjects of great civic importance to everyone can be understood only by the authorities of one religious cult; nor will it be denied that modern civic institutions, especially in the United States, have been established with due regard to the capacity of the average man to understand.

II. The writer owns a profound veneration for the religion of the Catholic Church, Greek, Roman and Anglican, East and West, excepting in so far as it asserts a church sovereignty by divine right as an

article of faith or unites itself to the secular State as the religion by law established. At the same time he owns a deep appreciation of the practical services rendered by Protestantism, and also by Skepticism, in maintaining the equilibrium of truth through a tempestuous period in Western civilization, and in recording a living protest against the absolutism claimed by the Papacy over the Universal Church and, indeed, over the entire moral and political world.

III. It is hardly necessary to call attention to the consideration that the supernatural claims and the proof supporting the same, commonly urged in behalf of the Roman Catholic Church, are neither expressly conceded nor denied nor are they considered in the following pages. The arguments advanced are drawn entirely from public law, from political science and from history, and have no connection with the supernatural. The purpose is to present the situation between the Church of Rome and the modern State, not from the viewpoint of any religious or sectarian prepossessions but from that of the disinterested observer.

IV. The title might have referred to the United States of America as well as to the modern State. The former may, with advantage, be in the reader's mind as the typical instance. The latter, as a concept, has a certain flexibility accommodating the political conceptions involved, and its employment may keep the mind of the reader responsive to the consideration that the modern State, although it may be represented by the United States of America, is not consummate therein, but is still in process of that development in which, by basing government on the consent of the

governed, it has diverged so widely from the institutional development of the Church of Rome. Only in the further development of both the Church of Rome and the secular State is there hope of a synthesis that shall give to the world Christianity and Democracy in a noble equilibrium. If that development ever takes place the Church of Rome must follow the State in the renunciation of the theory of the Two Powers, and with it the conception of itself as one of the political sovereignties of the world making its political "power irresistible by multiplying those who share it."

A consideration of such development is beyond the scope of a book limited, as is this, solely to the disclosure of those antagonisms between the two institutions which seem at present to prevent the realization of the dearest hopes of mankind, and the full fruition of the truth revealed by God to man in the life and words of the Divine Son of Mary.

V. It is recognized that there is in the following pages some lack of logical order in the presentation of the subject. Such order was impossible if the subject was to be treated, as desired, within a single volume. The chapters are presented as so many essays, connected in subject but having a certain detachment; an arrangement which has the advantage of presenting the subject in a variety of lights, after which it must be left to the fair judgment of the reader's good sense and just intention. As a result of this arrangement there is also some repetition which, under the circumstances, has been found unavoidable.

VI. In all quotations from Roman Catholic authorities the word "Roman", where clearly implied, is in-

serted in parentheses before the words "Catholic", "Church", "religion", "faith", etc. Owing to the claim of the name of "Catholic" by the Greek and Anglican Churches, as well as by the Roman Church, and to the separation of the one pre-Reformation church of the West into many "churches", "religions" and "faiths", any use of these words without qualification is often misleading. Such insertion of the word "Roman" results only in expressing more clearly the intent, so that what might be considered as a liberty becomes really a courtesy.

VII. As far as possible sources of information hostile to the Roman Catholic Church have been avoided and preference given to authorities which it acknowledges. Thus it is hoped that whatever differences may be found as to conclusions will not be found as to facts. In pursuance of this end frequent reference has been made to the *Catholic Encyclopedia,* bearing the imprimatur of John Cardinal Farley, Archbishop of New York. Never before, it may be assumed, has a human institution, claiming to incorporate a tradition in a legal continuity of two thousand years, laid at the bar of human judgment a compendious and popular statement of its proofs, its history and its aims. A work so magnanimously conceived and admirably executed can have no other effect than that of clarifying religious thought and promoting the consideration of those claims of institutional Christianity which now press upon the popular consciousness. The generous distribution of the *Encyclopedia* throughout this country makes the greater number of the citations in the following pages available for readers.

CHAPTER I

POLITICS AND RELIGION

That ardent champion of the Papacy, Count De Maistre, wrote long ago that if a man, belonging to one of the non-Roman Churches, took up his pen in the discussion of Roman Catholic claims, he ought to be stopped at the very title-page of his work and asked: "Who are you? . . . for whom do you speak?" Count De Maistre insisted that the answer would be: "For the Church." [1] The writer here speaks not "for the Church" but for the Civic Primacy of Peoples which, in the modern State, demands government by the consent of the governed as being essential in the divine order of human society to which the State no less than the Church belongs. Those who look in these pages for propaganda in behalf of any Church will not find an intentional word. On the other hand, those who prefer reticence to facts, or, as Father Figgis said of Cardinal Manning, mistake history for heresy, will, it is hoped, be equally disappointed.

A casual examination of the public mind discloses at present a widespread interest in the relations of the venerable Church of Rome to the secular States of the world. There is a revival of the ancient controversies between that Church and the State, which Roman Catholics claim are the result of prejudices unsup-

[1] J. De Maistre, *The Pope*, p. 319.

ported by facts, whereas others vehemently assert that they are the result of convictions established by facts. The object here is to reveal the real situation, thereby dissipating the prejudices or proving the facts; for, as Lord Acton has said: "Concealment is unworthy of those things which are Divine and holy in religion, and in those things which are human and profane publicity has value as a check." [2]

Experience has proven that inquiry into the subject before us provokes, with Roman Catholics, a resentment quite unjustifiable in view of the fact that the subject is of profound importance to all men, of whatever belief, dwelling together in one political commonwealth. If questions drawn from no later period than 1870 are presented, the interlocutor is told that, while living in the twentieth century, he is apparently thinking in the sixteenth.[3] If he would refer the claims of the Roman Church to their authoritative sources, he is told that the sources are relegated to the limbo of defunct controversies, even though he finds them referred to in late pontifical utterances. If he points out that the Roman Church asserts in Mexico the right to a juristic personality and the right to hold property independently of the sovereignty of the Mexican peo-

[2] *Selections from the Correspondence of the First Lord Acton,* vol. i, p. 120.

[3] Thus, Mr. Chesterton, in the issue of the Roman Catholic journal *America,* June 4, 1927, p. 179, would seem to believe that the Encyclical Letter *Immortale Dei* of Pope Leo XIII belongs to the sixteenth century, and that one who asks about the beatification of John Felton by Pope Leo in 1882 is not looking at the real world but is far away in some quiet garden at Hampton Court kissing the hand of Henry VIII. But one must not be too hard on Mr. Chesterton, who has always found paradoxes more entertaining than facts.

ple, or ventures the suggestion that propositions taken from the Encyclicals of late Popes would make up a questionable text-book for the instruction of American youth, the imputation is made that he is bringing religion into politics, as though that were some heinous offense. Why should religion not be brought into politics? Politics is commonly defined as the science or practice of government. Politics, and especially modern politics, is largely the application by the community of morals to communal life. Cardinal Manning said:

"Now I may be asked, Why should the Holy Father touch on any matter of politics at all? For this plain reason: because politics are a part of morals. What the moral law of the Ten Commandments is to the individual, politics are to society. Politics are nothing more than the morals of society—the collective morality of Christian men united together under social law . . . Politics are morals on the widest scale." [4]

A Roman Catholic authority, the Reverend Father Joyce, writing in the *Catholic Encyclopedia*,[5] says:

"The (Roman) [6] Church has ever affirmed that the two (morality and religion) are essentially connected, and that apart from religion the observance of the moral law is impossible."

[4] H. E. Manning, *Sermons on Ecclesiastical Subjects*, vol. ii, p. 83.

[5] Vol. x, p. 559 b.

[6] In all quotations from Roman Catholic authorities the word "Roman", where clearly implied, is inserted in parentheses before the words, "Catholic", "Church", "religion", "faith", etc. *Vide supra*, Introductory Note.

The Reverend Father Hilgers, in the same *Encyclopedia*,[7] says:

"Faith and morals in a very special sense are the domain of the (Roman) Church; within their limits she must have independent, sovereign power and be able to discharge autonomously her most sacred duties."

If politics thus include morals, and morals are essentially and integrally a part of religion, the connection between politics and religion, for which we contend, would seem to be a fact.

But the words "politics" and "morals" have each several connotations, and to these attention must be given in interpretation and application. No Church would insist that its divine mission covered the civic questions of the water supply or of the civil service. On the other hand, no Church would fail to assert that its divine mission did relate to such civic questions as the status of marriage, charitable relief, property rights and education. Therefore, Cardinal Merry del Val can say [8] with truth that when the Pope speaks on political matters, he does not speak infallibly, and Cardinal Manning can say [9] with equal truth that when the Pope

[7] *C. E.*, vol. iii, p. 527 a.

[8] "Much less do we dream of teaching that he (the Pope) is infallible, or in any degree superior to other men, when he speaks on matters that are scientific, or historical, or political, or that he may not make mistakes of judgment in dealing with contemporary events, with men and things." *The Truth of Papal Claims*, p. 19.

[9] "I believe, if the Holy Father had confined himself simply to faith and to morality, in the ordinary and inadequate sense of the word, very little would have been heard of the Syllabus. But under the head of morals, he had—for his duty demanded it of him, as the universal teacher of the Christian world, as the pastor of

speaks on political matters he does speak infallibly.

The relation of religion and religious institutions to the State has always presented religious and political problems. Where a union existed between Church and State, either the State absorbed the Church, as in the Roman Empire, with the Emperor as *Pontifex Maximus*, or the Church absorbed the State, as in the Jewish theocracy, with the High Priest as King. With Christianity there came a new dispensation. The Nazarene lawgiver, in the episode of the Tribute Money, directed that men render unto Cæsar the things that are Cæsar's and unto God the things that are God's. He promulgated a law theretofore unknown in the political and social life of men. Had the law been followed, Christian society, from Pentecost on, would have been characterized by the separation of Church and State, rather than by a union which mingled the things of God with the things of Cæsar in a profane miscarriage. The Christian Church in the West might have avoided that status of sovereignty which, under the theory of the Two Powers, necessarily led to the apportionment of the power and wealth of the world between the Church and the State, and to the present disordered condition of the institutional Church in the welter of political and material interests.

The course of history gave to Latin Christianity the task of developing the institutional form of the new religion in the Western World. In the early centuries, before Constantine, the Church in obedience to

the universal flock—pointed out and condemned certain errors in political philosophy which strike at the root of morals. Therefore the world has risen in uproar." *Sermons,* vol. ii, pp. 82–83.

the Messianic teaching assumed no sovereignty, but relegated to Cæsar that form of government and order which was his peculiar appanage. It claimed for itself only the preaching of the Word and the administration of the sacraments of Christ, as the things of God, under a dispensation of divine love through a private and voluntary association of believers.[10] But the environment of Roman Imperialism and the Roman legacy of public law and political conceptions, in less than four centuries did much to transform the constitution of the Christian Society.[11] Great changes began with the conversion of the Emperor Constantine when the Christian religion became the religion of the Emperor.[12] The Church adopted the institutional life and the legal and political concepts of the Roman Empire. The accidents of history and the exigencies of time imposed upon the Scriptural primacy of the Bishop of Rome a factitious pontifical sovereignty.[13]

[10] " . . . the grouping of Churches throughout the empire as a whole, could only represent, when compared with the State, a private society." L. Duchesne, *Early History of the Christian Church,* vol. ii, p. 517.

"Before the conversion of Constantine . . . there was little question about the relation between the State and the Church . . . The Church was a voluntary society within the Empire, dependent for every public right that it might enjoy . . . Christians asked for toleration, and maintained that they could not give up their faith and worship at the command of any earthly power; but toleration was all that they asked." . . . R. W. & A. J. Carlyle, *A History of Mediæval Political Theory in the West,* vol. i, p. 176.

[11] J. P. Davis, *Corporations,* vol. i, p. 37; vol. ii, p. 236; A. T. Wirgman, *The Constitutional Authority of Bishops in the Catholic Church,* p. 54.

[12] Acton, *The History of Freedom and other Essays,* pp. 31, 33, 196–197; Duchesne, *Early History of the Christian Church,* vol. ii, pp. 518, 522; *Catholic Encyclopedia,* vol. viii, p. 26 d.

[13] De Maistre, p. 139, says that the Popes became "sovereigns by compulsion."

A Scriptural exegesis was developed, giving to the metaphor of the Keys and to the Power to Loose and to Bind a significance that supported that sovereignty. At the opening of the medieval era the theory of the Two Powers had been adopted, and the life of the Western world was thereafter dominated by the two sovereignties of the Latin Church and the State united in a partnership of power that was disastrous in the life of both.

In the sixteenth century the medieval dream was at an end. The Emperor was a mere figure of imperial power, and in the seventeenth century the Treaty of Westphalia divested a protesting Pope of sovereign rights over Christians within the Empire. The national states of a New Europe took the place of the decrepit Empire in the political world. They repudiated that unity that was basic in the medieval conception, and drove the fragments of the shattered Church of Christ to unholy unions with national monarchs under whom the religious life of man fared as sadly as in the day of contending Pope and Emperor. In the eighteenth century, the United States of America, which the environment of the New World freed from medieval obstructions, repudiated, not only in principle but in fact, the union of Church and State, and inaugurated their final separation by the declaration of the Constitution: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." [14] The provision did

". . . The Church of Rome, confounding in itself two governments, falls in the mire, and soils itself and burden." Dante, *Purgatorio,* Canto xvi, lines 127–129; see also E. Moore, *Studies in Dante,* p. 17.

[14] Constitution of the United States, Amendment 1.

but embody the wisdom gleaned from the blood-stained pages of the history of Church and State. It ignored and implicitly repudiated the claim to Divine Revelation as a basis for political authority and rights. It recorded the conclusion of the American people against the sovereignty of the Church of Rome and of every church, and against the union of the Church of Rome and every church with the State in all forms and at all times. Mr. Taft made a clear statement of the results thus achieved in the words which he addressed to Pope Leo XIII on his special mission to the Vatican as Governor of the Philippine Islands:

"The transfer of sovereignty and all governmental property rights and interests from the Crown of Spain to the United States, in the Philippine Islands contained in the Treaty of Paris was a transfer from a government between which and the Church of Rome there had been in those islands the closest association in property, religion, and politics, to a government which by the law of its being is absolutely prevented from having such associations with any Church." [15]

The Church of Rome refuses to accept, as objective truth, the principle of separation. It still asserts a sovereignty that can only function satisfactorily to itself when united with the sovereignty of the State—according to the theory of the Two Powers—in a relation that concedes the supremacy of the Church at all vital points. It is this doctrine that arouses the anxiety and invites the condemnation of those outside its

[15] See Ponce *vs.* The Roman Catholic Church, 210 U. S. 296.

membership. In virtue of the organic conception of society [16] the omnipotence of State government is gradually declining under constitutions enacted in the right of the Civic Primacy of the People; but the social life of man is still confronted with an omnipotent sovereignty in the Roman Church and its Supreme Pontiff exalted to the highest expression in the Constitution *Pastor Æternus* of the Vatican Council of 1870,[17] and proclaimed as the creation of Almighty God and therefore as unalterable by the power of man.

Roman Catholic claims obtain respect because they are known to be sincere, and because those who press them are sincere in believing them to be supported by a Divine Revelation known to them. Yet history proves that convictions which are sincere and revelations believed to be divine cannot be safely made the basis of a social or political order. To this the development of the Papacy under the Cross bears witness no less than the history of Islam under the Crescent. Sincere convictions and Divine Revelations as the basis for a social or political order have been effectually disposed of in this country by the Supreme Court of the United States in its far-reaching declaration:

"That the State has a perfect right to prohibit polygamy, and all other open offences against the enlight-

[16] *Autobiography and Life of George Tyrrell,* vol. ii, p. 191: "The growth of organic, as opposed to mechanical conceptions of society, will reconcile his (the Pope's) headship with the fundamentally democratic character of the Church, and will relax an impossible centralisation in favour of a freer and more spiritual unity." Father Tyrrell was excommunicated in 1907.

[17] See *infra,* chapter IV, pp. 59–62.

ened sentiment of mankind, notwithstanding the pretence of religious conviction by which they may be advocated and practiced." [18]

It will be urged that all religious societies have political points of contact and may present claims in conflict with the State. Dr. Laski points out that the Scottish Church claimed to be no less a *societas perfecta* than the State; [19] that the Encyclical Letter *Immortale Dei* of Pope Leo XIII is very akin to the Presbyterian theory,[20] (minus, we assume, the Pope), and that an Apostolic Episcopate, having a doctrinal relation to Christ, argues that State interference is without justification.[21] Cardinal Newman held that the powers which Roman Catholics give to the Holy See, the Church of England lodges in her bishops and priests, corporately or individually.[22] But neither Calvinism in its absorption of the State, nor Anglicanism in its adulterous union with it, nor the Apostolic Episcopate outside of Rome, ever declared a sole and individual sovereignty an article of faith or denied in the Church the principle of government by consent of the governed. Cardinal Newman made due recognition of the unique claims of the Roman Church in these respects in his reference to

". . . the distinctive doctrine of the (Roman) Cath-

[18] The Late Corporation of the Church of Jesus Christ of Latter Day Saints *vs.* United States, 136 U. S. 1.

[19] H. J. Laski, *Studies in the Problem of Sovereignty,* pp. 38, 55.

[20] *Ibid.,* p. 50, note 86.

[21] H. J. Laski, *Authority in the Modern State,* p. 197.

[22] *Certain Difficulties felt by Anglicans in Catholic Teaching,* vol. ii, p. 200.

olic Religion, the doctrine which separates us from all other denominations of Christians however near they may approach to us in other respects, the claims of the see of Rome . . ." [23]

The legitimacy of Church sovereignty is, therefore, a part of our inquiry. Whence, we would ask, did Latin Christianity derive the authority to mould the Church of Christ in the sinister image of Cæsar, and insist on similitude between the State and the Church where difference would seem to be the order of reason? It has been well said that Jesus was never found in the council chamber of princes. With human sovereignty He came in touch but once; then in the person of Pontius Pilate it condemned Him to death. "The kingdom not of this world" it would seem has not yet found an institutional form in harmony with the lesson of the Tribute Money and the Sermon on the Mount. If it shall prove that Christianity, in institutional form, is limited to the absolutism of the Papacy, the State establishment of religion, or an American sectarianism that has no bond of unity except the rejection of all voluntary submission to religious authority, it would seem that institutional Christianity is the failure that Father Tyrrell thought.[24]

[23] *Ibid.*, p. 206. In the sectarian churches the membership of the church governs, creating offices and establishing jurisdiction. In the other branches of Christendom where the episcopate is preserved, it is not supreme in *jurisdiction,* although sacred and inviolable in the sacramental order. The jurisdiction of the episcopate is controlled, *de facto,* by the State in the case of an established religion, or it is controlled by the church at large. Normally it is the church that governs, allocating to the episcopate its jurisdiction within which it exercises its sacramental powers.

[24] *Autobiography of George Tyrrell,* vol. i. p. 213.

The modern State, as represented *e. g.* in the United States of America, makes the consent of the governed the essential condition of government. It requires that all civic questions, moral or otherwise, shall be decided by its people in the exercise of a free moral consciousness and a free individual conscience. Such a consciousness and such a conscience are essential to "the free synthesis of living wills" on which the life and conduct of the modern State depends. That synthesis may be partly obstructed, or wholly prevented, where a religious belief substitutes at certain points (for the exercise of a free consciousness and conscience) an obedience to a religious sovereignty alien to the State, created in its own theory by the act of God irrespective of the consent of those whom it governs. Therefore, an inevitable conflict arises between two sovereignties—the State and the Roman Catholic Church. It will be urged that in this conflict the constitutional guarantees of religious freedom and equality protect the State, but it is self-evident that the Constitution may be changed and that, in the nature of things, Roman Catholics, as they may have the power, would change the Constitution to harmonize with their most sacred beliefs. These indeed would demand their action in favor of such constitutional change. All this is said in full recognition of the fact that other religious societies may from time to time advocate changes in the Constitution in conformity with their beliefs, but their action would not, and in the nature of things could not, conflict with the political and constitutional order of the State, as in their organization each, like the

State, derives jurisdiction from the consent of its members, and claims in moral issues no human sovereignty superior to the Civic Primacy of the People organized in the State.

The issue that arises is not new in the world. It has been the problem of statesmen for many centuries. It is not new in the United States. In 1869 the most eminent Roman Catholic theologian of his day, Dr. Döllinger,[25] wrote:

"In the United States, Catholics cannot form a political party. There, too, as an American bishop has assured us, their situation is most unfavourable as regards political influence and admission to office, because it is always cast in their teeth by Protestants that they find their principles in Papal pronouncements, and cannot therefore honestly accept the common liberties and obligations of a free State, but always cherish an *arrière pensée* that if ever they become strong enough they will upset the Constitution."

Almost as an echo to the words of Dr. Döllinger, a Roman Catholic, eminent in the world of letters,[26] writes today:

"The chief political problem presented by religion has, then, still to be solved in the New World. What the result will be certainly no foreigner could attempt to predict, and probably no American citizen who has

[25] Janus (Dr. J. J. I. von Döllinger), *The Pope and the Council,* p. 26. Dr. Döllinger was excommunicated in 1871; see *C. E.,* vol. v, pp. 94 d, 98d.

[26] H. Belloc, *The Contrast,* pp. 165–166.

recognised that problem from his reading of history or from his instinctive reaction against the presence of the (Roman) Catholic Church, can foretell one either. But presented the problem certainly will be, and in one or other of the many fashions, stable or unstable, more or less tragic, it will have to be solved."

CHAPTER II

SOVEREIGNTY IN THE CHURCH OF ROME

The word sovereignty, we are aware, is now relegated by many authorities to the realm of the unreal, and the political changes of the last two centuries make room for doubt whether there is an unlimited sovereignty among the governments of secular States. In accordance with these changes the word has been somewhat discarded in politics, and in his first message to Congress, at a time when State sovereignty was hotly asserted over a part of the country, President Lincoln adroitly alluded to the fact that the word does not appear in the Constitution of the United States nor, as he believed, in that of any of the States. But, whatever may be the present status of the word, or the conception—category or fact—it is one of the terms in which the human mind still thinks, and, in history and political science, we would fare badly without it. The relation of the Roman Church to the modern State cannot be considered without recourse to it, and surely the history of that Church and the State, which has been little else than a conflict of sovereignties, would be meaningless did we exclude it. Bare of it as our American political formularies may be, it is written with emphasis and frequency in all documents up to date wherein the Church of Rome has defined its jurisdiction or asserted its ecumenical powers.

The sovereignty thus referred to is not, in Roman

doctrine, a human or secular institution. Had it been so regarded it might happily have shared the theoretical modification that has fallen to all secular sovereignty. It is in theory a sovereignty created by God in the Supreme Pontiff by which he is made the Vicegerent of God and the Vicar of Christ. It must be borne in mind that in Roman doctrine these titles are fact, not metaphor. They are the clear expressions of the Pope's fundamental sovereignty whereby he, being factually God's appointed representative on earth, must be the medium for the revelation of the Divine will to man. As such, he is necessarily the source under God of all moral truth and of the validity of all political power. Once the premises are admitted these conclusions cannot be evaded. There can in reason be no disagreement between God and his appointed Vicegerent and Vicar on earth in respect to moral truth or the validity of political power. And in a secular State wherein a part of the people accept the Pope as such Vicegerent and Vicar, the State can have for them no authority in matters belonging to morals that is not, in objective truth, subordinate to that of the Pope. "The position of the Roman Pontiff," says Dr. Woywod, "is altogether without parallel in the world. In all other independent human organizations and societies, the form of government is dependent on the will of the majority, but the form of government of the (Roman) Church is fixed by Christ, and thus cannot be changed by men. The authority of the Supreme Pontiff does not come from the (Roman) Church, but from Christ." [1]

[1] Woywod, vol. i, p. 85 (Canon 219). See also p. 85 (Canon 218),

It may be doubted whether a more concise definition of the word "sovereignty" exists than that given by President Lincoln in the Message alluded to: "a political community without a political superior." [2] It is supreme power and jurisdiction in government over a territory and the people within it—the State—or over a religious solidarity of people irrespective of territory—the Roman Church.[3]

In the claim that the Roman Church and the State are each such a political sovereignty, with jurisdiction in certain respects over the same matters, lies the crux of their conflict. They are, in Roman theory, the two perfect societies—*societates perfectæ*—Church and State—of which political and religious history has had and still has much to say.

p. 86 (Canons 220–221). Dr. Woywod states that all that the Church can do as against the supremacy of the Pope is to determine the manner of electing the Pope. But the Church *qua* Church does not possess this power, for the laity have no real jurisdiction in the Church, such jurisdiction being confined entirely to the clergy (*vide infra* p. 159) in strict subordination to the Pope. In view of the powers conceded by Roman Catholic doctrine to the Pope (*vide infra* chapter VIII) it is inconceivable that any change in the election of the Pope could be made against the will of the Pope.

[2] H. J. Raymond, *History of the Administration of President Lincoln,* p. 146.

[3] *Sovereignty* has been defined as the supreme and supereminent power of doing what pertains to the *spiritual* and bodily welfare of the members of the State. (Dunning, *A History of Political Theories, from Luther to Montesquieu,* p. 63). "It is essential to the modern conception of sovereignty that it should be exclusive of any other human superior authority, should be wielded by a determinate person or organization of persons, and should be on the whole habitually obeyed by the bulk of the community." (*Century Dict.*). The sovereignty claimed by the Pope pertains to "spiritual" welfare, is "exclusive" of "human superior authority", "wielded by a determinate person", and is "habitually obeyed" by the church membership. *Cf. Maine, Early History of Institutions.* p. 349.

In Roman Catholic theory the religious society in the State was a natural society, until the revelation of Jesus Christ eliminated the conception of a natural religious society and established the Roman Church in its place as the one universal religious and supernatural society.[4] In this view the Roman Church becomes the sole and universal Church, superior by reason of its divine nature and purpose to the State, and exclusive, in objective truth, of the claims of all other religious societies to moral and legal rights.

The two perfect societies are thus defined by Roman Catholic authority:

"The (Roman) Church and the State are both perfect societies, that is to say, each essentially aiming at a common good commensurate with the need of mankind at large and ultimate in a generic kind of life, and each juridically competent to provide all the necessary and sufficient means thereto." [5]

This proposition would make of each, the Roman Church and the State, sovereignties in their respective jurisdictions, inasmuch as *each claims to enjoy inherently all the necessary and sufficient means to its ends.*

[4] " . . . in the natural order and by force of reason alone . . . man, though morally obliged to social worship, was morally free to establish a parallel organization for such worship or to merge its functions with those of the State, giving a double character to the enlarged society, namely, civil and religious . . . The development of all this has been given an entirely different turn through the intervention of the Creator in His creation by positive law revealed to man, changing the natural status into a higher one, eliminating natural religious society, and at the last establishing through the mission of our Lord Jesus Christ an universal and unfailing religious society in the (Roman Catholic) Church. This is a supernatural religious society." *C. E.*, vol. xiv, p. 77 b, c.

[5] C. E. vol. xiv, p. 250 d.

There is in the sovereignty of the modern State a controlling power—the Civic Primacy of its People—from which the government is derived and by the consent of which its authority exists. In the sovereignty of the Roman Church there is a government, but its powers are not derived from its membership, nor do its powers exist by the consent thereof. The sovereignty of the Roman Church is, in theory, derived from God alone and its powers are alone conferred by Him. It is in theory a sovereignty by Divine Right—*jure divino*, and therefore something more than a church; it is a political community without a political superior at all vital points, and, therefore, it is a political sovereignty. Into whatever state it comes there are, in its theory, at once two sovereignties claiming jurisdiction over the moral life of men, and, whether the constitution of the State provides for their separation or for their union, serious antagonisms inevitably result such as never arise in the case of other religious societies, which do not claim political sovereignty superior at any point to the sovereignty of the State. While both the State and the Church are thus in Roman Catholic doctrine two sovereignties, the sovereignty of the State is found in the people who create the government of the State. The sovereignty of the Church is not found in its members but in the Pope, on whom it is conferred not by the Church or its members but by God Himself. The State derives its powers from the consent of the governed; the Pope derives his powers irrespective of the consent of the governed. The government of the State is responsible to the people of the State; the government of the Church is not responsible

to the people of the Church. The one is responsible power; the other is irresponsible power, except under the *a priori* presumption that there is a responsibility to God under supernatural theories accepted by the Roman Church and rejected by all the rest of mankind.

By its formal decree, the Constitution *Pastor Æternus* of 1870, the Roman Church declared itself to be a sovereignty represented in the Pope, and, further, that all its members owe the duty of obedience to the Pope in matters belonging to faith and morals, and to the government of the Roman Church throughout the world, under the penalty of the loss of salvation.[6] Thus it declared itself to be a sovereignty *de fide*. No duties of obedience to the State or to the individual conscience are excepted. They are absorbed with all other duties and with all rights to freedom of thought and action in the duty of obedience to the Pope by the sweeping terms of the Constitution. Furthermore, there is no qualification as to the penalty of disobedience: all disobedience is expressly visited with damnation in the world to come. Nevertheless Roman Catholic doctrine teaches the supremacy of conscience, even as against the Pope, where it is impossible for the conscientious objector to convince himself that he is wrong and the Pope right, or where he cannot feel justified in following "supreme" and "infallible" authority as the wiser course irrespective of his own convictions.[7] The Church concedes that there may be such a thing as an

[6] See chap. IV, pp. 59–60 *infra.*

[7] J. E. Ross, *Christian Ethics: The Book of Right Living,* p. 103, citing in note 9, Newman, *Difficulties of Anglicans,* vol. ii, pp. 247, 259–260.

unjust excommunication based on arguments, evidence or presumptions which may be erroneous,[8] but according to the words of the *Pastor Æternus* disobedience would incur the loss of salvation, and the conscientious objector must obviously take his chance of finding in the world to come whether his conscience or the Pope is right or wrong. This theoretical freedom or supremacy of conscience does not seem of great importance for one who is compelled to believe as basic in his faith that the Pope is the Vicar of Christ and occupies on earth the place of God Almighty;[9] and the terms of the *Pastor Æternus* would seem to overthrow conscience by requiring obedience in conduct, at the risk of the loss of salvation, under the Pope's prerogative of supremacy, to say nothing as to belief under his prerogative of infallibility.[10] Under such conditions the power to exercise the individual conscience is obviously paralyzed, and the sovereignty of the Church is in no real sense qualified by the freedom of the individual conscience. Furthermore, it is a sovereignty, in the belief of its members, superior to the State in matters belonging to morals if there is a conflict between the Church and the State.[11]

Some consideration of the religious and political theories of the Middle Ages out of which the Roman

[8] *C. E.*, vol. v, p. 684 a.

[9] Pope Leo XIII in the Encyclical Letter *Præclara Gratulationis Publicæ* (The Reunion of Christendom) said: "But since We hold upon this earth the place of God Almighty . . ." (*Jamvero cum Dei omnipotentis vices in terris geramus*); see *Great Encyclical Letters*, p. 304.

[10] See chap. IV.

[11] *C. E.*, vol. xiv, p. 251 c, d. See p. 34 *infra*.

Church and the State have both emerged is necessary. In theory the medieval Church and the medieval State were coterminous, and in membership and citizenship identical. Indeed, membership in the Church was a prerequisite to citizenship in the State. So close was the union that heresy in the Church was punished by the State with the same penalties as treason to the State. The relation of the two was the result of the medieval notion of unity, and of the medieval notion that a State was a "Christian" State because its officials professed for it an orthodox belief. The Church and the State became, in theory, really one commonwealth or Christian State, functioning through two officials, Pope and Emperor, representing, respectively, the *Sacerdotium* or Spiritual Power and the *Imperium* or Secular Power—the two earthly Vicars of God.[12]

[12] The titles "Vicar of God", "Vicar of Christ", were applied sometimes to the Emperor and sometimes to the Pope through the Middle Ages. If there was any preference it was in the application of the title "Vicar of Christ" to the Pope and "Vicar of God" to the Emperor. See Carlyle, vol. i, p. 215, 260.

"The Holy Roman Empire, however shadowy its power, was, so long as men made it an aim to work for, a testimony to the most important characteristic of political thought till the close of the seventeenth century—the belief in the intimate connection of politics and religion. The ideal of the Empire, with Christ as its King and His two vicegerents upon earth, was that of a theocracy. This is the explanation of the otherwise strange fact, that men should ever have believed in so unworkable a theory, as that of two equal heads of the State. Christ is the real head of the Empire, and Pope and Emperor are both conceived rather as executors armed from above with administrative powers than as themselves ultimate authorities." J. N. Figgis, *The Divine Right of Kings,* pp. 39-40.

" . . . in all centuries of the Middle Age Christendom, which in destiny is identical with Mankind, is set before us as a single, universal Community, founded and governed by God Himself. Mankind is one 'mystical body'; it is one single and internally connected 'people' or 'folk'; it is an all embracing corporation (*universitas*),

This medieval theory of Church and State was known as the theory of the Two Powers, but the dual expression implied union and not separation, for it connoted the union of the Two Powers in one State and under one constitution.[13] The difficulty in the theory was that between the Two Powers there was no exact boundary; a twilight zone, a borderland, necessarily existed as a result of the twofold nature of man, physical and

which constitutes that Universal Realm, spiritual and temporal, which may be called the Universal Church (*ecclesia universalis*), or, with equal propriety, the Commonwealth of the Human Race (*respublica generis humani*). Therefore that it may attain its one purpose, it needs One Law (*lex*) and One Government (*unicus principatus*)." O. Gierke, *Political Theories of the Middle Age*, p. 10.

"Both Papacy and Empire rose in an age when the human spirit was prostrated before authority and tradition, when the exercise of private judgment was impossible to most and sinful to all. Those who believed the miracles recorded in the *Acta Sanctorum*, and did not question the Pseudo-Isidorian decretals, might well recognize as ordained of God the twofold authority of Rome, founded, as it seemed to be, on so many texts of Scripture, and confirmed by five centuries of undisputed possession. Both sanctioned and satisfied the passion of the Middle Ages for Unity." J. Bryce, *The Holy Roman Empire*, p. 422.

Dr. Emerton says that in the world of Aquinas: "The one and only God had made one sole and sufficient revelation of himself, and this revelation had included a scheme of social order. Divine Providence had chosen for the moment of its revelation a point of time when the world was all united under the one beneficent, peaceful sway of the Roman Empire, and had demonstrated its purpose by bringing into one efficient and harmonious whole the two dominant forces of this Empire and the Christian Church, the supreme trustees of its revelation." E. Emerton, *The Defensor Pacis of Marsiglio of Padua*, p. 2.

[13] Pope Gelasius I (492–496) summed up the theory thus: "There are two powers by which chiefly this world is ruled: the sacred authority of the priesthood and the authority of kings. And of these the authority of the priests is so much the weightier, as they must render before the tribunal of God an account even for the kings of men." *C. E.*, vol. vi, p. 406 b; Carlyle, vol. ii, p. 144.

moral, temporal and spiritual. Even the medieval notion of unity at its best could not obliterate it. Over this twilight zone there was necessarily a twofold jurisdiction which multiplied the medieval controversies between Popes and Emperors. The advantage was with the Pope as the head of the Spiritual Power, for the spiritual interests of man were postulated in medieval political thought as superior to his temporal interests, and the alleged superiority was made the basis of the political constitution.

A Divine Revelation, which at the time experience could not and reason dared not dispute, had given to the Pope the Keys of Heaven and Hell and the Power to Loose and to Bind. With such powers the Pope's Vicariate over the moral and religious affairs of men dwarfed the Emperor's Vicariate over secular affairs.[14]

Under such empire builders as Gregory VII and Innocent III [15] the assertions of Papal sovereignty mounted higher and higher, until in 1302 Pope Boniface VIII in the Bull *Unam Sanctam* declared the Church to be the source of political power.[16]

[14] "He (the Pope) came out victor, and the Emperor was made to see that the great institution which claimed, and in the belief of the age held, the authority of consigning men's souls to heaven or hell, could never be conquered by a power which was confined to the exercise of earthly punishments, no matter how severe." J. W. Burgess, *The Sanctity of Law,* pp. 40–41.

[15] Innocent III in the decree *Venerabilem* asserted that the Holy Roman Emperor derived his political authority from the Popes who had transferred the right to Imperial authority from the Emperors of the East to Charlemagne and his successors in the West. See *C. E.*, vol. viii, p. 14 b.

[16] *The Catholic Encyclopedia* (vol. xv, p. 126 b. c.) sums up the declarations of the Bull as follows:

"(1) Under the control of the (Roman) Church are two swords,

With the decline of the imperial idea and the rise of national States, the democratic idea asserted itself more and more over the monarchical idea. As the centuries went by it triumphed in the development of modern States based more and more on the principle of government by the consent of the governed. One political sovereignty, wide in its extent, prodigious in its claims—the Church of Rome—adhered to the medieval doctrine that its sovereignty was derived directly from God, and not from its subjects, and existed by the fiat of God and not by the consent of the governed. The claims of Papal sovereignty in their essential nature have never changed since the close of the Middle Ages. The political philosophy of Leo XIII differed in no wise from that of Innocent III

that is two powers, the expression referring to the medieval theory of the two swords, the spiritual and the secular . . .

(2) Both swords are in the power of the (Roman) Church; the spiritual is wielded in the (Roman) Church by the hand of the clergy; the secular is to be employed for the (Roman) Church by the hand of the civil authority, but under the direction of the spiritual power.

(3) The one sword must be subordinate to the other; the earthly power must submit to the spiritual authority, as this has precedence of the secular on account of its greatness and sublimity; for the spiritual power has the right to establish and guide the secular power, and also to judge it when it does not act rightly. When, however, the earthly power goes astray, it is judged by the spiritual power; a lower spiritual power is judged by a higher, the highest spiritual power is judged by God.

(4) This authority, although granted to man, and exercised by man, is not a human authority, but rather a Divine one, granted to Peter by Divine commission and confirmed in him and his successors. Consequently, whoever opposes this power ordained of God opposes the law of God. . . . 'Now, therefore, we declare, say, determine and pronounce that for every human creature it is necessary for salvation to be subject to the authority of the Roman pontiff.'"

and Boniface VIII. If secular government by the consent of the governed be substituted for the government of the Holy Roman Empire, the issue between the Roman Church and the modern State remains the same as the issue between the Popes and the Hohenstaufen.

The Roman Church with its doctrine of Church sovereignty found most harmonious that medieval union of Church and State which recognized its sovereignty as well as the sovereignty of the State. It regards with natural aversion that separation of Church and State which is characteristic of the modern State, and which in its very nature repudiates the sovereignty of the Church of Rome. It is inevitable that it should find the modern political environment hostile to its nature and uncongenial with its traditions, and that it should still teach, as we shall later show, that its union with the State is essential to the consummation of its alleged divine mission.

The jurisdiction of a political sovereignty is enforced through laws to which obedience is compelled by physical sanctions or penalties. It will be urged that a Church cannot be a sovereignty because its sanctions are spiritual, but the penalties or sanctions of the sovereignty of the Church of Rome are as physical as the temporal sanctions of the secular State. The very idea of disobedience to the teaching of one who is the Vicar of Christ is terrifying to the orthodox believer. The express sanctions of the Pope's laws are excommunication in this world and presumptive damnation in the world to come; one involves ostracism here; the other agony after death; both necessarily involve for

the believer present intense distress of mind, a penalty that is both physical and temporal.

The doctrine of the Church of Rome justifies the use of physical sanctions and penalties, and its record through the ages reveals it in practice.[17] Throughout its medieval history, as we shall see, it used force in the application of its laws, and as late as 1864 Pope Pius IX in the *Syllabus* condemned the proposition that his Church has not the power to use force.[18] The Jesuit writers, Schneemann and Schrader, writing at about the same time, openly taught that the Church had the right to use force in the infliction of its penalties, and was prevented from doing so only by the oppression of the State. Schneemann taught the right of the Church to inflict fines, imprisonment, scourging, and banishment.[19]

At the present day it is taught:

"The question has been raised whether it be lawful for the (Roman) Church, not merely to sentence

[17] When members of the Roman Catholic Church recently ventured to cite a Bishop of the Church before the secular courts of Rhode Island in an inquiry as to the disposition of trust property, the following statement was cabled by Cardinal Gasparri, the Papal Secretary of State, to Monsignor P. Fumasoni-Biondi, Archbishop of Dioclea, Apostolic Delegate to the United States:
". . . The Right Reverend Bishop Hickey, of Providence, asks whether he can proceed to a *sententia declaratoria* of excommunication incurred by those who have cited him before the civil tribunal. Your Excellency may inform him, as soon as possible, that the Sacred Congregation has answered his question in the affirmative." (The letter from the Apostolic Delegate to Bishop Hickey containing this statement was published over his signature in the *Providence Journal,* October 22, 1927, p. 1).

[18] *Syllabus,* Proposition XXIV, see *infra* appendix II, p. 295.

[19] A reference to the statements of these writers will be found in Janus, pp. 10-11.

a delinquent to physical penalties, but itself to inflict these penalties. As to this, it is sufficient to note that the right of the (Roman) Church to invoke the aid of the civil power to execute her sentences is expressly asserted by Boniface VIII in the Bull *Unam Sanctam.*" [20]

Innocent III used force with the Albigenses.[21] The Inquisition used it. The union of Church and State in the medieval system made it the duty of the Church to use force, if not directly then through its partner, the medieval State. Dr. Laski says that in the Middle Ages "it had been the function of the State to be the police department of the Church." [22] In the medieval system heresy was punishable with death. The Church from the early centuries had taught that it could not shed blood because its divine nature forbade.[23] But St. Thomas Aquinas provided for the difficulty. He taught that in the case of the unrepentant heretic:

". . . the Church no longer hoping for his conversion, looks to the salvation of others, by excom-

[20] *C. E.,* vol. xii, p. 266 c. The claim that the doctrine in question could be applied only when a whole nation is thoroughly Roman Catholic in spirit is quite true. The matter under discussion is the fallacy of a theory, not the present practicality of its application. The application follows when sufficient power is obtained.

[21] Martin Luther, too, prescribed the use of force in executing the decrees of his Church. "Heretics," he said, "are not to be disputed with, but to be condemned unheard, and whilst they perish by fire, the faithful ought to pursue the evil to its source, and bathe their hands in the blood of the Catholic Bishops, and of the Pope, who is a devil in disguise." *Table Talk,* iii, 175, quoted by Acton, *History,* p. 164.

[22] Laski, *Studies,* p. 235.

[23] *C. E.,* vol. viii, p. 27 d.

municating him and separating him from the Church, and furthermore delivers him to the secular tribunal to be exterminated thereby from the world by death." [24]

That became the law of the Church, which, wrapping itself in a mantle of theoretical impeccability, and piously citing St. Augustine, St. Ambrose and St. Leo [25] against the shedding of blood, passed the "heretic" on to the State for extermination. The significant point is that the physical sanction of the shedding of blood was thus in reality secured for the sovereignty of the Church and its laws. The *Catholic Encyclopedia* states that the "present-day legislation (of the Roman Church) against heresy has lost nothing of its ancient severity; but the penalties on heretics are now only of the spiritual order; all the punishments which require the intervention of the secular arm have fallen into abeyance." [26]

[24] St. Thomas Aquinas, *Summa Theologica,* translated by the Fathers of the English Dominican Province, Part II, second part, p. 154. *Cf* also *C. E.*, vol. viii, p. 35 a. Even in the Inquisition the Church condemned the heretic and the State executed him. The Church, however, itself applied torture in the trial of heretics and it was authorized by Pope Innocent IV in the Bull *Ad exstirpanda* (1252), renewed by Popes Alexander IV, Clement IV, Nicholas IV, Boniface VIII. (*C. E.*, vol. viii, p. 34 b)—a clear instance of the employment of force in its cruelest aspect by the Church.

[25] *C. E.*, vol. viii, p. 27 d.

[26] *C. E.*, vol. vii, p. 260 d.

"Abeyance" is commonly defined as "a state of suspended action or existence, or temporary inactivity." *Century Dictionary.*

The instruction given by the Brothers of the Christian Schools on Papal penalties and power will be found in their *Exposition of Christian Doctrine,* Part I, Dogma, p. 480 (see *infra* p. 267 note 22), from which we quote:

"211. Which are the *temporal* penalties that the Pope may inflict?

"Public penances, fines, exile, detention, etc.

The claim of the Roman Church to sovereignty has been asserted by its highest authorities. As far back as 1250 Pope Innocent IV said, "Christ established not only a pontifical but a royal sovereignty (*principatus*)." [27] "We teach and declare," said the Vatican Council of 1870, "that by the appointment of our Lord the Roman Church possesses a sovereignty . . ." [28] "The Almighty . . . " said Pope Leo XIII in his

"212. Which are the marks of the Pope's power in the (Roman) Church?

"The Pope's power is: 1st. A *plenary* power. In things of ecclesiastical right, there is nothing that the Pope may not do when necessity demands it;

2d. A *supreme* power. The Pope has no superior here below; he is subject to God alone;

3d. A *universal* power, extending to all, pastors and faithful;

4th. An *ordinary* power, that is, a power inherent in the very dignity of Sovereign Pontiff, and not an accidental power derived by delegation or commission;

5th. An *immediate* power, which he may exercise over all, either in his own person directly, or through delegates appointed by him. (Vatican Council, Constit. *Pastor Æternus,* chap. iii).

"'As the Pope is the vicar of Christ, the head of the visible Church, the successor of St. Peter, he has authority over all the Church. . . . All the members must look upon him as their father. His word must be considered as the instrument which God employs to make known His will. (Saint J. B. de la Salle).'"

[27] *Encyclopædia Britannica,* vol. xiv, p. 580 c (*Codex epist. Vatic.* No. 4957, 49 quoted in Raumer, *Hohenstaufen,* iv, 78). The statement in full is as follows: "The emperor doubts and denies that all men and all things are subject to the See of Rome. As if we who are judges of angels are not to give sentence on earthly things. . . . The ignorant assert that Constantine first gave temporal power to the See of Rome; it was already bestowed by Christ Himself, the true King and Priest, as inalienable from its nature and absolutely unconditional. Christ established not only a pontifical but a royal sovereignty (*principatus*) and committed to blessed Peter and his successors the empire both of earth and heaven, as is sufficiently proved by the plurality of the keys."

[28] Constitution *Pastor Æternus;* see *infra,* appendix I, p. 285.

Encyclical *Immortale Dei* (1885) "has appointed the charge of the human race between two powers, the ecclesiastical and the civil, the one being set over divine, the other over human things. Each in its kind is supreme . . . " [29] In the Encyclical Letter *Sapientiæ Christianæ* (1890), on the Chief Duties of Christians as Citizens, Pope Leo XIII said:

"But the supreme teacher in the Church is the Roman Pontiff. Union of minds, therefore, requires, together with a perfect accord in the one faith, complete submission and obedience of will to the Church and to the Roman Pontiff, as to God Himself. This obedience should, however, be perfect, because it is enjoined by faith itself, and has this in common with faith, that it cannot be given in shreds;—nay, were it not absolute and perfect in every particular, it might wear the name of obedience, but its essence would disappear." [30]

Again, the same Pope said: "The (Roman) Church alike and the State, doubtless, both possess individual sovereignty . . ." [31]

"The (Roman) Catholic Church possesses, by divine institution, the power of jurisdiction or government." [32]

Those who have taught that "coercive jurisdiction of every kind belongs to the civil power alone, and sought to restrict the (Roman) Church to the use of

[29] *Infra,* appendix III, p. 310.
[30] *G. E. L.,* p. 193.
[31] *G. E. L.,* p. 197.
[32] S. Woywod, *A Practical Commentary on the Code of Canon Law,* vol. i, p. 75 (Canon 196).

moral means . . ." have always been condemned by the Holy See.

The Roman Church has expressly decreed that it has "received from God power, not merely to direct by counsel and persuasion, but further to command by laws, and to coerce and compel the delinquent and contumacious by external and salutary penalties. . . . Nor may it be held that the pope's laws must exclusively concern spiritual objects, and their penalties be exclusively of a spiritual character."

The Roman Church " . . . is not dependent on the permission of the State for her existence, but holds her charter from God."

" . . . there is a fallacy in the assertion that the (Roman) Church is a spiritual society; it is spiritual as regards the ultimate end to which all its activities are directed, but not as regards its present constitution nor as regards the means at its disposal." [33]

"As a perfect society she (the Roman Church) has a right to all those means which are necessary for the attaining of her end. These, however, will include far more than spiritual objects and spiritual penalties alone; for the (Roman) Church requires certain material possessions, such, for example, as churches, schools, seminaries, together with the endowments necessary for their sustentation." [34]

"The (Roman) Church has the right to preach the Gospel everywhere, willing or nilling any state author-

[33] *C. E.*, vol. xii, p. 266 b, c.

[34] *C. E.*, vol. xii, p. 266 c. The claim of this right is conspicuous in the present controversy between the Roman Church and Mexico.

ity, and so to secure the rights of its members among the subjects of any civil polity whatever." [35]

The Second Council of Lyons (1274), as confirmed by the Vatican Council of 1870, declared:

"The holy Roman Church enjoys supreme and full primacy and princedom over the whole Catholic Church, which it truly and humbly acknowledges that it has received with the plenitude of power from our Lord Himself in the person of Blessed Peter, Prince and Head of the Apostles, whose successor the Roman Pontiff is . . ." [36]

The following four propositions are condemned by Pope Pius IX in his *Syllabus:*

that "the (Roman) Church has no innate and legitimate right of acquiring and possessing property";
that "the (Roman) Church has not the power of using force, nor has she any temporal power, direct or indirect";
that "the teaching of those who compare the Sovereign Pontiff to a prince, free and acting in the universal (Roman) Church, is a doctrine which prevailed in the Middle Ages";
that "in the case of conflicting laws enacted by the two powers, the civil law prevails." [37]

The *Catholic Encyclopedia* [38] states:

"The (Roman) Church has the right to govern her

[35] *Ibid.,* vol. xiv, p. 251 c.
[36] See appendix I, p. 288, *infra*
[37] See appendix II, p. 295–297, *infra*
[38] Vol. xiv, p. 251 c, d.

subjects, wherever found, declaring for them moral right and wrong, restricting any such use of their rights as might jeopardize their eternal welfare . . . all within the limits of the requirements of her triple purpose, as laid down by the Divine Positive Law, of preserving the internal order of faith and morals and its external manifestation, of providing adequate means of sanctification for her members, and of caring for Divine worship, and over all bound by the eternal principles of integrity and justice declared in the natural and positive Law of God."

"In case of direct contradiction, making it impossible for both jurisdictions to be exercised, the jurisdiction of the (Roman) Church prevails, and that of the State is excluded."

Pope Pius XI in his Encyclical of December 23, 1922, said: "The divine origin and nature of Our power as well as the sacred right of the community of the faithful scattered throughout the entire world, require that this sacred power should be independent of all human authority, should not be subject to human laws. They require in fact that these rights and power should be completely independent and that this should be made manifest." [39]

The jurisdiction of the State is thus asserted to be, in objective truth, wholly subordinate to the sovereignty of the Roman Church over the subjects of the latter in all matters belonging to the moral life of man. Further, it is asserted that the right of the Church of Rome to its propaganda in the State and to all means which, in the opinion of the Church, are necessary thereto, in-

[39] *The Forum,* January, 1928, p. 53. *Acta Apostolicæ Sedis,* vol. 14, 1922, Dec. 27, Encyclical *Urbi Arcano.*

cluding property and property rights, is superior, in objective truth, to the sovereignty of the State.

The question will be asked: are there not limitations which, according to Roman theory, qualify the sovereignty of the Pope? It is said to be limited by the law of nature, but the Church, under the revealed law, is the expounder of the law of nature, and is teacher and guardian thereof.[40] Again, it is said to be limited by the revealed law, *i. e.*, the Holy Scriptures, the declarations of the Fathers, and by the Tradition of the Roman Church; but since the Pope is substantially supreme in the interpretation and exposition of Scripture, of sacred writings, and of Tradition,[41] they impose no real constitutional limitation. "*La tradizione son' io,*" said Pope Pius IX: "I am Tradition." [42] If the power of the Pope has limitations, he is, in effect, the sole judge of the limitations. A limited power, with the donee of the power as sole judge of the limitations, is not in any true sense a limited power; it is a legal fiction. The Pope has no Supreme Court and is, there-

[40] " . . . The (Roman) Church has authority to define not merely those truths which form part of the original deposit of revelation, but also such as are necessarily connected with this deposit. The former are held *fide divina,* the latter *fide infallibili.*" *C. E.,* vol. xii, p. 265 b. This power of defining is wholly vested in the Pope by the Constitution *Pastor Æternus,* chapter iv, see *infra,* appendix I, p. 290.

[41] See Constitution *De Fide Catholica,* chap. ii, in D. C. Mirbt, *Quellen zur Geschichte des Papsttums und des Römischen Katholizismus,* p. 457; Constitution *Pastor Æternus,* chap. iii and iv, *infra* appendix I, pp. 285–290.

[42] Acton, *History,* p. 549. "The Dogmatic Commission of the (Vatican) Council proclaims that the existence of tradition has nothing to do with evidence, and that objections taken from history are not valid when contradicted by ecclesiastical decrees. Authority must conquer history." *Ibid.,* p. 515.

fore, supreme over constitutional limitations in the Church, if any exist. His power is analogous to that of the President of the United States if the powers of Congress and of the Supreme Court were blended with the executive power. It is, as has been said, independent of constitutional restraint through the membership of the Church, because the power of the Pope is derived in theory not from the people but from God.[43]

Limitations to such a power are imaginary, not real, and the sovereignty of the Pope is, in substance, absolute. To it, the Roman Church requires that its members shall assent, in matters belonging to morals, as an integral part of their religious faith, and such assent is as much a part of the Roman Catholic profession of faith as the belief in Jesus Christ Himself as Son of God.[44]

By this sovereignty the Church of Rome is distinguished from other churches. The latter impart their instruction to members as opinion.[44a] The instruction of the Pope is imparted to Roman Catholics as law, according to an article of faith. The instruction in the

[43] The teaching in Roman Catholic schools of the Christian Brothers (*cf.* p. 29, note 26) is, as we have seen: "In things of ecclesiastical right, there is nothing that the Pope may not do when necessity demands it. . . . The Pope has no superior here below; he is subject to God alone."

[44] *Cf.* chap. IV, *infra* p. 75.

[44a] The use of the word "opinion" here has been unjustifiably criticized. It refers to current instruction or discipline not to dogma nor to natural or divine law. In the Roman Church such instruction is divine law—the emanation of sovereignty in divine right. In other religious bodies such instruction or discipline is opinion. They claim no sovereignty. Their instruction and discipline are the emanation of the collective will of the society itself and are changed from time to time by that will.

one case is human opinion; in the other it is sovereign and divine law *de fide*. Herein is the point of conflict between the Roman Church and the modern State: in the Roman Church, absolute monarchy *de fide*, the mind and the will of one; in the State, democracy, a synthesis of free wills, government by the consent of the governed, with the right of ultimate appeal to the community. Thus in the modern State two sovereignties exist, that of the State and that of the Roman Church, claiming jurisdiction in certain points over the same matters. We quote Mr. Belloc again:

"The (Roman) Catholic Church is in its root principle at issue with the Civic definition both of freedom and of authority. For the purpose of the State, religion is either a universally admitted system, or a matter of individual choice. But by the definition which is the very soul of (Roman) Catholicism, religion must be for the (Roman) Catholic *First*, a supreme authority superior to any claims of the State . . ." [45]

[45] *The Contrast*, p. 160.

CHAPTER III

THE ROMAN CATHOLIC CHURCH IN THE MODERN STATE

The subjects of Papal sovereignty exist in every State, and, in virtue of the Church sovereignty to which they owe obedience *de fide*, they form a Roman Catholic solidarity in every State that may, under the electoral system, come into sharp conflict with the membership of the community not included in such solidarity. The conditions are such that on any given question of moral interest the free synthesis of all minds in the State or community may be prevented by the obedience owed *de fide* by the Roman Catholic solidarity to the Pope.[1]

Cardinal Gibbons in 1909, in his much discussed essay, said:

". . . Many Protestants say, 'we obey our conscience, you obey the Pope.' Yes; we obey the Pope, for our conscience tells us that we ought to obey the spiritual authority of the Pope in everything except what is sinful. 'But,' they reply, 'we do not believe that any human power should come between the human conscience and duty.' Neither do we; but while you believe in private judgment, we believe in a religion of authority which our conscience tells us is our lawful guide and teacher in its own sphere. You say that you believe in religious freedom. Do you, however, interpret this free-

[1] This has repeatedly occurred in the older States of Europe in instances to which we refer. (*cf.* pp. 209, 214, 245, 250–257).

dom to apply only to yourselves; or are you willing to concede that to others likewise is to be left the freedom to follow their consciences? You can conceive a State passing laws that would violate your conscientious convictions. Would you accept these laws, or would you resist them as your fellow religionists in England recently resisted an education law of which they did not approve?" [2]

The Cardinal was wrong if he believed that only a Roman Catholic would resist a law that violated conscience. The right to resist such a law is quite universal in enlightened governments, and was recognized by the Fathers of this Republic as harmonious in its political order.[3] But the resistance, to be justified, must be in virtue of a free conscience and not in virtue of a conscience under a law of obedience to any sovereignty. In the latter case the conscience and will of a sovereignty is substituted for that of the citizen contrary to the State's constitutional order, which is immediately challenged; the revolt in the right of conscience becomes conspiracy and sedition.

The Cardinal seems to admit our contention that Roman Catholics must, in their moral activities, obey, under the penalty of damnation, the spiritual authority of the Pope. He distinguishes Roman Catholics from those who obey their own consciences. As matters in which obedience is to be rendered must often include

[2] Cardinal Gibbons, "The Church and the Republic," *North American Review,* March, 1909, pp. 321–336.

[3] A. Hamilton in *The Federalist,* No. 28, p. 165. "If the representatives of the people betray their constituents there is . . . no resource left but in the exertion of that original right of self-defence which is paramount to all positive forms of government."

moral questions of civic interest, all that we contend for is granted; the authority of the Pope may at any time determine, through a Roman Catholic majority, civic policies and interests.

We speak of the modern State as a reality, but it is really a category.[4] Our mental conception of it is as something apart from and sovereign over the people within it. Really the State is, in modern theory and fact, the people within it. In its simplest and essential aspect it is the community organized for government. It functions through majorities and minorities. Its citizens organize into societies, associations, parties or corporate groups according to their opinions and convictions. These all rest on the consent of the membership, as the modern State rests on the consent of the governed. There is an exception: the Church which owes obedience in morals as part of its essential belief to the sovereignty of the Pope.[5] In a conflict of opinion in matters belonging to morals the members of that Church cannot, without a violation of their religious allegiance, enter into that free synthesis of living wills that is essential to the safety and welfare

[4] H. J. Laski, *The Foundations of Sovereignty and other Essays*, p. 248.

[5] "All sects, denominations, confessions, schools of thought, and associations of any kind have a more or less comprehensive set of tenets on the acceptance of which membership depends. In the (Roman) Catholic Church this natural law has received the sanction of Divine promulgation, as appears from the teaching of Christ and the Apostles . . . Freedom of thought extending to the essential beliefs of a Church is in itself a contradiction; for, by accepting membership, the members accept the essential beliefs and renounce their freedom of thought so far as these are concerned." *C. E.*, vol. vii, p. 259 c.

of the modern State.[6] The will and power of one, the Pope, may obstruct. If the membership of the Roman Church acts with the majority, the minority cannot appeal to the free communal sense of *all*. There is no such free communal sense in a State where an absolute sovereignty, apart from the People, may intervene to command a solidarity of its own subjects within the State. Thus the sovereign claims of the Church which in the Middle Ages caused political issues with the sovereignty of the Emperor, now creates political issues with the sovereignty of the people. The constitutional claims and theories of the Roman Church make possible the paralysis of popular sovereignty in matters belonging to morals at any moment where the interests of that Church (not according to the free mind and will of all its members but to the mind and will of one—the Roman Pontiff) require. When in the struggle in Germany in 1872 between the State and the Roman Church (the *Kulturkampf*) the Jesuits routed the Government, the event was referred to by Cardinal Manning, quoting from the pages of a Roman Catholic journal, as follows:

"The German Empire,—defended by a million of bayonets, and with a legion of secret and public policemen at its disposal; celebrated, sung, and idolised only

[6] " . . . the allegiance of man to the state is secondary to his allegiance to what he may conceive his duty to society as a whole. It is, as a secondary allegiance, competing in the sense that the need for safeguards demands the erection of alternative loyalties which may, in any given synthesis, oppose their wills to that of the state. In the ordinary acceptance of the term, such an attitude denies the validity of any sovereign power save that of right; and it urges

a few days ago by an innumerable crowd of panegyrists as the first Power of the world,—reduced to straits by two hundred defenceless priests!" [7]

It may well be that the Government ought to have been defeated. The incident is referred to here not as reflecting on the propriety of groups of citizens opposing laws they believe unjust or immoral, but as demonstrating that the Roman Catholic Church establishes within the State a body of citizens who have not freedom of conscience and free consciousness in matters belonging to morals, because of the *de fide* jurisdiction of the Pope over them. Had the two hundred priests referred to appealed merely to fellow citizens as such, and had their appeal resulted in a change of governmental policy, nothing could be said. It would be just such an action as any group of two hundred citizens might justifiably take in any modern State. But the appeal was to the Roman Catholic solidarity, and that, by the constitution of the Church, had not freedom of consciousness and conscience against the voice of the Pope as represented in the two hundred priests.

The ultimate appeal in democracy is to the governed, to the electorate, to the free consensus of all; the ultimate appeal in the Church of Rome is to the will of one, to the Pope. The settlement of the conflict would seem to involve the modification by the Church of claims to a sovereignty that, if admitted, works

that the discovery of right is, on all fundamental questions, a search, upon which the separate members of the state must individually engage." Laski, *Authority*, p. 122.

[7] *Sermons*, vol. ii, Introduction, p. lxi.

State nullification, partial if not complete. If the alleged "Divine Revelation" of the Church of Rome forbids such modification the prospect is not happy.

The common argument is that the alleged antagonisms between the Roman Catholic solidarity and the community at large, in the modern State, is theoretical and legalistic, and without practical interest. The challenge has been made to point to instances of practical, as distinguished from theoretical, significance.[8] We shall consider such instances in later pages.[9] The practical instance we refer to now is the *de fide* obligation of obedience by the Roman Catholic solidarity to the alien sovereignty of the Pope in civic matters involving morals, and the teaching of such obedience to future citizens. In the one hundred and fifty years of our national existence the Roman Catholic solidarity has been a distinct minority, and today represents at most not over one-fifth of the population. Frequent opportunities for practical issues do not arise under such conditions. Theories do not develop into issues in the modern electoral State until a disturbance in the accustomed electoral equilibrium occurs, but theories are in the meantime gathering force against the day when conditions permit action. It is with theories we are dealing. False or dangerous theories cannot ask for a toleration that may in reason be followed by convulsions of their own creation. If the theory of the right of property in man had been rejected before slavery grew to be a majority interest in the State, and be-

[8] Hon. Alfred E. Smith, "Catholic and Patriot," *Atlantic Monthly*, May, 1927, pp. 721–728.

[9] See chapters X–XIV.

fore Chief Justice Taney wrote his opinion in the Dred Scott case, the Civil War would never have darkened the land.

The world has been lately assured by distinguished authority,[10] that the Church of Rome holds:

"If religious freedom has been accepted and sworn to as a fundamental law in a constitution, the obligation to show this tolerance is binding on conscience."

This doctrine is safe and sound and not peculiar to the Church of Rome. It would characterize even a society of skeptics. But the important considerations are, first, that such constitution can be changed; secondly, that the fundamental doctrine and inherent claims of the Roman Church are inconsistent, and even in conflict with such constitution, as we shall show, and in theory require its change; and, thirdly, the obedience owed by Roman Catholics as an integral part of their religious faith to the authorities of their Church enables the authorities of that Church to command their support in amending such constitution and generally in securing legislation favorable to that Church. It may be pointed out under the second consideration that the principle of separation, *e. g.*, in the Constitution of the United States, which relegates the Roman Catholic Church to the status of other religious societies, and deprives it of the sovereignty it claims, is obnoxious to that Church.[11] It is regarded by it as false in objective truth and in abstract theory. It is tolerated by it

[10] Hon. Alfred E. Smith; see *Atlantic Monthly*, May, 1927, p. 725, quoting *C. E.*, vol. xiv, p. 772.

[11] So said Pope Leo XIII, *vide infra* p. 106; appendix III, p. 317.

only out of favor or expediency. Therefore, if the majority of the citizens were converted to the Roman Catholic faith, and the teaching and doctrine thereof were put into practice, it would naturally result in constitutional amendments. Those amendments, in the nature of things, would proceed precisely in proportion to the ratio of Roman Catholic conversions, over and above the mere balance of power in the electorate. The expression of such considerations as these should not be construed by Roman Catholics, as they so frequently are, as imputing treasonable designs. There is nothing treasonable in a propaganda to amend a constitution by majority vote in a manner consistent with one's convictions. If there were, then most of the political parties in the United States would be treasonable factions, for they advocate the amendment of the Constitution at one point or another. No church in America other than the Church of Rome possesses a doctrine or makes claims that are, in objective truth, inconsistent with the religious liberty established by the Constitution of the United States. The endorsement of religious liberty and of the principle of the separation of Church and State, as objectively true, always and everywhere, the repudiation of church sovereignty and of all individual supremacy and infallibility in divine right, characterize all churches in America other than the Church of Rome. They are, therefore, without the motive to change the existing Constitution. Furthermore, as the government in those churches derives all power from the consent of the governed, the *de fide* obedience of members to a religious sovereignty cannot be commanded. Such churches are, therefore, without the mo-

tive or the machinery to oppose the sovereignty of the State or to alter the constitutional *status quo*. The Church of Rome still retains its medieval constitution and doctrine, which make the union of the Roman Catholic Church and the State the ideal relation, and the only relation justifiable under the Divine Revelation as interpreted by the Church of Rome.

It cannot be disputed that the nature and government of the Roman Catholic Church necessarily arrays against it, in the modern State, all those who are unable to embrace its belief. This results from the law of self-preservation directed against the ultimate consummation of Roman Catholic ideals: the conversion of the nation, or the conversion of a majority, and the subordination of the State through constitutional changes to the moral sovereignty of the Pope. Against that majority the "heretical" minority would be as powerless as it was in the days when Cardinal Pole, acting as the agent of Pope Julius III, declared the realm of England "Catholic" and the *nation* restored to the religion of the Roman Catholic Church under Mary Tudor.

In support of the claims we have made we would refer to the treatise in the *Catholic Encyclopedia* by the Reverend Charles Macksey, a distinguished Roman Catholic authority on public law, sometime Professor of Ethics and Natural Right at the Gregorian University, Rome. We would ask the following questions:

Question: Does the jurisdiction of the Roman Church cover matters belonging to morals as well as to faith?

Dr. Macksey says:

"The goal, then, of the (Roman) Church is the perfect supernatural happiness of man; its proximate purpose, to safeguard the internal moral order of right and wrong; and its external manifestation, to care for Divine worship and minister to man the supernatural means of grace." [12]

Question: Where the question is not purely spiritual or moral, but mixed with other elements, who shall decide whether it belongs to the jurisdiction of the Church or the State?

Dr. Macksey says:

"In case of direct contradiction, making it impossible for both jurisdictions to be exercised, the jurisdiction of the (Roman) Church prevails, and that of the State is excluded." [13]

Again, Dr. Macksey says:

"Consistently with the superiority of essential purpose indicated above," (*i. e.*, that of the Roman Church) "the judicial decision as to when a question does or does not involve spiritual matter, either purely or in part, rests with the (Roman) Church. It cannot lie with the State, whose jurisdiction, because of the inferiority of its ultimate end and proximate purpose, has not such judicial faculty in regard to the subject-matter of a jurisdiction which is as far above its own as the ultimate end and proximate purpose thereof is above that of the State. In analogous fashion every higher court is always judge of its own jurisdiction as against a lower." [14]

[12] *C. E.*, vol. xiv, p. 251 b.
[13] *Ibid.*, p. 251 d.
[14] *Ibid.*, pp. 251 d, 252 a.

Question: Through whom is the jurisdiction to be applied?

Dr. Macksey says:

"All the above is matter of principle, argued out as a question of objective right, and it supposes that the jurisdiction is to be applied through the respective subjects of the same," [15] (*i. e.*, the subjects of the Roman Church and the subjects of the State).

Question: Who are the subjects of the Roman Church?

Dr. Macksey says:

"The juridical subject of the (Roman) Church is every human being that has validly received the Sacrament of Baptism . . . not every subject of the (Roman) Church is a member thereof . . . Hence, those validly baptized Christians who live in schism, or . . . profess a faith different from that of the (Roman) Church, . . . are not members of the (Roman) Church, though as a matter of objective right and duty they are still her subjects." [16]

Question: Can the Roman Church command the State?

Dr. Macksey says:

". . . In purely temporal matters, while they remain such, the (Roman) Church cannot command the State any more than she can command the subjects of the State, even though these are at the same time her

[15] *Ibid.*, p. 252 a.
[16] *Ibid.*, p. 252 a, b.

own subjects. But in spiritual and mixed matters calling for corporate action of the State, the question depends upon whether the physical persons who make up the moral personality of the State are themselves subjects of the (Roman) Church. In case they are, then the (Roman) Church has in consequence jurisdiction therein over the State." [17]

Question: Is a State which is made up of citizens partly Roman Catholics and partly those of other beliefs, subject, in objective truth, to the jurisdiction of the Roman Catholic Church?

Dr. Macksey says:

". . . A mixed State, one, namely, the constituents of whose moral personality are necessarily of diverse religions, practically lies outside the reach of ecclesiastical jurisdiction, since the affiliation of some of the constituents could not make a subject of the (Roman) Church out of the moral personality constitutionally made up of elements not all of which share such affiliation. The subordination here indicated is indirect: not that the (Roman) Church does not directly reach spiritual and mixed matters, but that in their regard it directly reaches only its immediate subjects and indirectly through them the State which they constitute." [18]

The subordination would be indirect, as Dr. Macksey says. But that is enough. The question at issue is not whether it would be direct or indirect, but whether it exists and whether the Church may, in objective

[17] *C. E.*, vol. xiv, p. 252 d.
[18] *Ibid.*, p. 253 a.

right and theory, command its members so as to effect that subordination. Dr. Macksey clearly says it may so command, and that it reaches the State through its own immediate members who form the Roman Catholic solidarity in the electorate.

Question: Does the Roman Church claim the right to command her members who form part of the electorate of the State in securing the fulfillment by the State of civil duties owed (in Roman Catholic doctrine) by the State to that Church?

Dr. Macksey says:

"If . . . the physical persons constituting the moral person of the State are the subjects of the (Roman) Church, they are still, in this joint capacity, subject to her in like matters, namely, in the fulfilment of all civil duties of the State towards (Roman) religion and the (Roman) Church. The (Roman) Church, because of the uselessness of her insistence, or because of greater evils to be so avoided, may waive the exercise of this jurisdiction; but in principle it is hers." [19]

Question: What are the civil duties which the Roman Church claims the State owes it, and which, as a matter of objective truth, the Roman Church ought to obtain from the State?

Dr. Macksey says:

"In principle, as a matter of objective duty, the State is bound to recognize the juridical rights of the (Roman) Church in all matters spiritual, whether purely so or of mixed character, and its judicial right

[19] *C. E.*, vol. xiv, pp. 252 c, 253 a.

to determine the character of matters of jurisdiction, in regard, namely, to their spiritual quality." [20]

While in the above quotation the word spiritual is stressed and the word moral is not used, mixed matters are referred to. Dr. Macksey has already said that [21] the spiritual jurisdiction of the Roman Church is "to safeguard the internal moral order of right and wrong . . ." It is clear that in Dr. Macksey's teaching the State is bound to recognize the supremacy of the jurisdiction of the Roman Church in the great moral questions of life. Public worship and education would come instantly within such a claim of jurisdiction. The State, therefore, is bound to recognize the juridical rights of the Roman Church in these matters and, *in the last analysis*, they are exclusive and absolute.

Question: Do the juridical rights of the Roman Church as a matter of objective right and of theory, *i. e.*, under ideal Roman Catholic conditions, demand that the State shall further and protect the Roman Church and religion as the only true Church and religion?

Dr. Macksey says:

"The State, furthermore, is bound to render due worship to God, as follows from the same argument from the natural law which proves man's obligation to external worship, namely, that man must acknowledge his dependence upon God and his subjection to Him in every capacity in which he is so dependent, and therefore not only in his private capacity as an individual

[20] *Ibid*, p. 252 c.
[21] *Vide supra* p. 47.

but also in that public, corporate capacity whereby he and his fellow citizens constitute the State. Due worship, in the present economy, is that of the religion of Christ, entrusted to the care of the (Roman) Church." [22]

Question: Do the juridical rights of the Roman Church as a matter of objective right and of theory, *i. e.*, under ideal Roman Catholic conditions, demand that the State shall further and protect the Roman Catholic Church in any claim it may make over the moral instruction of children?

Dr. Macksey says:

"The State must also protect the (Roman) Church in the exercise of her functions, for the reason that the State is bound to protect all the rights of its citizens, and among these their religious rights, which as a matter of fact would be insecure and fruitless were not the (Roman) Church protected. The State is even under obligation to promote the spiritual interests of the (Roman) Church; for the State is bound to promote whatever by reaction naturally works for the moral development of its citizens and consequently for the internal peace of the community, and in the present condition of human nature that development is necessarily dependent upon the spiritual influence of the (Roman) Church." [23]

Dr. Macksey obviously claims that teaching, in matters belonging to morals, is the sovereign right of the Roman Church. The United States by its Constitution

[22] *C. E.*, vol. xiv, p. 252 c.
[23] *C. E.*, vol. xiv, p. 252 c.

repudiates such sovereignty in the Roman Church, and all sovereignty in every church, by forbidding Congress to make any law respecting an establishment of religion, or prohibiting the free exercise thereof. Dr. Macksey, therefore, asserts a right that is in direct conflict with the constitutional law of the State. He also asserts a dependence of the community in its moral life on the Roman Church which excludes any other religious and moral society from moral and, therefore, in the nature of things, from legal rights. Nothing can be more intolerable in the modern State than the promulgation of the theory that, as a matter of objective right, it is the duty of the State to promote the interests of the Roman Church to the exclusion of other churches.

Question: Does the Roman Church, then, consider that the union of Church and State is desirable, and that as far as possible or expedient it ought to be secured in preference to the existing separation?

Dr. Macksey says:

"Between the (Roman) Church and a non-Christian or a Christian, but non-(Roman) Catholic, State a condition of separation, as meaning a condition of indifference of the State towards the (Roman) Church, is to be expected, as the foundation of the specific obligations involved in union are wanting. Such a separation for a (Roman) Catholic State would be criminal, as ignoring the sacred obligations of the State." [24]

Dr. Macksey is strictly logical: When you cannot have separation, it is to be expected that you will not have it. When you can have union, it is criminal if

[24] *C. E.*, vol. xiv, p. 253 c.

you do not have it. The existence of a majority vote in its favor can, of course, reëstablish the ancient union of the Roman Church and the State.

Question: Where, in the modern State, the Roman Catholics are largely in the majority, must not the moral rights and, ultimately, the legal rights of the minority be, as a matter of objective truth, subject to determination in accordance with the will of the Pope operating through the majority?

An apposite answer to this question does not appear in Dr. Macksey's treatise, but happily it is a question that it would seem average common sense can answer. Differences of belief and opinion are, happily, sufficiently prevalent to prevent a unanimously Roman Catholic State in the New World, but not to prevent the development, through Roman Catholic propaganda, of a State that shall be as nearly Roman Catholic as it can be made. Agreeable as the situation might prove if all had been converted, the process of conversion has objections that are historically justified. The conversion of a majority in the modern State would secure control of the electorate. A minority would be compelled, in Roman Catholic doctrine, to rely on considerations of favor and expediency, and not on the sure foundation of objective truth, to secure and perpetuate the full enjoyment of their moral and legal rights, the freedom of thinking and acting on matters relating to religion and morals, the conduct of their public worship, and the preaching and teaching of their religious and moral tenets, as now guaranteed, *e. g.*, in the Constitution of the United States.[25]

[25] The journal *L'Europe Nouvelle* (Paris, July 16, 1927, p. 941,

A society, forming only a part of the community, cannot rightfully or justly ask from the rest of the community their unprotesting endurance of a doctrine which denies their inherent rights the basis of objective truth, and offers them in lieu of it a dubious toleration by grace and favor. Argument is not met by quoting glittering generalities uttered by members of the Roman Hierarchy on patriotism and civil duties; *e. g.*, (a) That religious liberty is safeguarded by the American Constitution;[26] to this we reply that the safeguard is found not in the Constitution but in the numerical majority that maintains it. (b) That it was a great leap forward when the United States declared that Congress should make no law respecting an establishment of religion;[27] to this we reply that a religion is substantially established when obedience to a church sovereignty is an integral part of its creed. (c) That union of the Roman Church and the State is relegated to the limbo of defunct controversies;[28] to this we reply that it is not so relegated for it is advocated here and now. (d) That no combination of circumstances is likely to arise which would make a union desirable to

note 13), commenting on the references of Governor Smith in his magazine article, (*Atlantic Monthly,* May, 1927, p. 724 d) to "the completely Catholic State," says:
"But it would be necessary in such a case to reserve to one, who in this completely Catholic State should have lost the Catholic faith, the possibility of living according to the law of his conscience."

"Encore faudrait-il ici réserver à celui qui, dans cet Etat complètement catholique, viendrait à perdre la foi catholique, la possibilité de vivre selon la loi de sa conscience."

[26] Cardinal O'Connell, see *Atlantic Monthly,* May, 1927, p. 725.

[27] Archbishop Ireland, *ibid.*

[28] Archbishop Dowling, *ibid.*

the (Roman) Church or the State;[29] to this we reply that it evades the teaching of the Roman Church that, in objective truth, there should be such union.

The issue remains: Can Roman Catholic claims be carried into effect in the modern State without substantial State nullification?

[29] Cardinal Gibbons, *ibid.*

CHAPTER IV

THE CONSTITUTION *PASTOR ÆTERNUS*

On the 18th of July, 1870, the Vatican Council convened by Pope Pius IX adjourned, leaving inscribed in the fundamental law of the Roman Church the Constitution [1] *Pastor Æternus, First Dogmatic Constitution on the Church of Christ.*[2] It declared the prerogative of supremacy and the prerogative of infallibility in the Pope as articles of faith of the Roman Church under the penalty of the loss of salvation. Its preamble declares it to be

"necessary to propose to the belief and acceptance of all the faithful, in accordance with the ancient and constant faith of the universal Church, the doctrine touching the institution, perpetuity and nature of the sacred Apostolic Primacy, in which is found the strength and solidity of the entire Church; and at the same time to proscribe and condemn the contrary errors so hurtful to the flock of Christ."

It will be observed that this preamble implies that nothing new is proposed in the Roman Church—but

1 *C. E.*, vol. iv, pp. 321a–322a. Papal Constitutions are "ordinations issued by the Roman pontiffs and binding those for whom they are issued, whether they be for all the faithful or for special classes or individuals. . . . The binding force of pontifical constitutions, even without the acceptance of the Church, is beyond question."

2 This Constitution is set forth in appendix I hereto, pp. 281–291.

only that which is in accordance with "the ancient and constant faith of the universal Church."

We would refer to certain points in the Constitution of special importance.

Chapter I deals with the institution of the Apostolic Primacy in Peter. It concludes with the Canon:

"If, anyone, therefore, shall say that Blessed Peter the Apostle was not appointed the Prince of the Apostles and the visible head of the whole Church Militant, or that the same directly and immediately received from the same our Lord Jesus Christ a primacy of honour only, and not of true and proper jurisdiction; let him be anathema."

The Primacy in Peter is, in Roman Catholic claims and theory, the supreme episcopal jurisdiction of the Pope as pastor and governor of the universal Church.[3] Jurisdiction is defined as the right to rule the Church of God.[4] It connotes obviously a supreme power that is sovereignty. It is this claim to a Primacy of Jurisdiction that has separated the rest of the Christian world from Rome. A large part of those separated from Rome would, it has often been said, acknowledge the Primacy of Honor which the Constitution expressly anathematizes; but they regard the Primacy of Jurisdiction as a factititous accretion imposed by Latin Christianity upon a valid and Scriptural Primacy of Honor. The Primacy of Jurisdiction is distinctly a Papal claim.[5] The claim of the sovereignty of the Pope

[3] *C. E.*, vol. xii, p. 423 d.
[4] *Ibid.*, vol. viii, p. 567 a.
[5] *Life of George Tyrrell*, vol. ii, p. 413: " . . . I believe in

had destroyed the unity of the Church and separated it into East and West, Roman and Protestant. But nevertheless the Vatican Council by the Constitution in question reasserted that sovereignty making the Primacy of Jurisdiction an article of faith, a belief that can be rejected only under the penalty of eternal damnation.[6]

Chapter II deals with the Perpetuity of the Primacy in the Roman Pontiffs as the successors of St. Peter, and concludes with the Canon:

"If, then, anyone shall say that it is not by the institution of Christ the Lord, or by divine right, that Blessed Peter has a perpetual line of successors in the primacy over the universal Church; or that the Roman Pontiff is not the successor of Blessed Peter in this primacy; let him be anathema."

Chapter III treats of the Power and Nature of the Primacy of the Roman Pontiff. It is with this chapter that this discussion is particularly concerned. It declares:

"Hence We teach and declare that by the appointment of our Lord the Roman Church possesses a sovereignty of ordinary power over all other Churches, and that this power of jurisdiction of the Roman pontiff, which is truly episcopal, is immediate; to which all, of whatsoever rite and dignity, both pastors and faithful, both individually and collectively, are bound, by their duty of hierarchical subordination and true

the Roman Church so far as it is Christian and Catholic; I disbelieve in it so far as it is papal."

[6] Appendix I, p. 286 *infra*.

obedience, to submit, not only in matters which belong to faith and morals, but also in those that appertain to the discipline and government of the Church throughout the world; so that the Church of Christ may be one flock under one supreme pastor, through the preservation of unity, both of communion and of profession of the same faith, with the Roman pontiff. This is the teaching of Catholic truth, from which no one can deviate without loss of faith and of salvation."

Chapter III in its third paragraph [7] asserts that such power in the Supreme Pontiff is not prejudicial to the power of the bishops in the Church, but is rather its strength and protection. As it deprives the bishops of all direct jurisdiction and subjects them wholly to the Pope the conclusion suggests points of difficulty.[8]

The fourth paragraph of Chapter III [9] declares it follows from the supreme power asserted that, in the exercise of his office, the Pope has the right of free communication with the pastors of the whole Church, and with their flocks, "that they may be *taught* and *ruled* by him in the way of salvation." It condemns the opinions of those who hold that such communications can lawfully be impeded; or who make it subject to the will of the secular power, so as to maintain that whatever is done by the Apostolic See for the government of the Church cannot have force or value unless it be confirmed by the secular power.

The fifth paragraph, Chapter III,[10] declares that

[7] Appendix I, p. 286.

[8] The relation of the Pope to the episcopate at large is considered in chapter VIII, p. 149 *infra*.

[9] Appendix I, p. 286.

[10] Appendix I, p. 286.

the Pope is the supreme judge of the faithful, "and that in all causes the decision of which belongs to the Church recourse may be had to his (the Pope's) tribunal." It affirms that none may reopen the judgment of the Apostolic See, "than whose authority there is no greater," nor "lawfully review its judgment," and that it is not "lawful to appeal from the judgments of the Roman pontiffs to an œcumenical council, as to an authority higher than that of the Roman pontiff."

Chapter III concludes with the Canon covering the prerogative of supremacy:

"If then any shall say that the Roman pontiff has the office merely of inspection or direction, and not full and supreme power of jurisdiction over the universal Church, not only in things which belong to faith and morals, but also in those things which relate to the discipline and government of the Church spread throughout the world; or assert that he possesses merely the principal part, and not all the fullness of this supreme power; or that this power which he enjoys is not ordinary and immediate, both over each and all the Churches and over each and all the pastors of the faithful; let him be anathema." [11]

"Ordinary jurisdiction," as defined by Roman Catholic authority, "is one which is exercised by the holder, not by reason of any delegation, but in virtue of the office which he himself holds . . . Jurisdiction is im-

[11] The prerogative of the supremacy is reaffirmed in the Code of Canon Law promulgated by Pope Benedict XV in the Bull *Providentissima Mater Ecclesia* (27 May, 1917); see Woywod, vol. i, p. 85 (Canon 218).

mediate when its possessor stands in direct relation to those with whose oversight he is charged." [12]

The immediate character of the Pope's jurisdiction gives him direct authority over each member of the Church to the full extent of his jurisdiction, *i. e.*, the jurisdiction does not have to be exercised through any intermediary, *e. g.*, the bishop.

Chapter IV defines infallibility as the prerogative of the Roman Pontiff in the following words:

". . . We teach and define that it (infallibility) is a dogma divinely revealed: that the Roman Pontiff, when he speaks *ex cathedra*, that is, when, in discharge of the office of pastor and teacher of all Christians, by virtue of his supreme Apostolic authority, he defines a doctrine regarding faith or morals to be held by the universal Church, is, by the divine assistance promised to him in Blessed Peter, possessed of that infallibility with which the divine Redeemer willed that His Church should be endowed in defining doctrine regarding faith or morals; and that, therefore, such definitions of the Roman pontiff are of themselves, and not from the consent of the Church, irreformable.

"But if anyone—which may God avert!—presume to contradict this our definition, let him be anathema."

Infallibility would thus seem to be a theological conception. It is a separate prerogative from the supremacy, which would seem to be a political conception, and yet it is directly connected with it. The sovereignty of the Pope consists of the supremacy plus the infallibil-

[12] *C. E.*, vol. xii, p. 266 d.

ity. The prerogative of the supremacy, as expressed, requires the obedience of Roman Catholics in respect to what the Pope teaches, directs, commands or judges; the prerogative of infallibility requires the belief of Roman Catholics that a doctrine is infallible truth which the Pope so declares; the Pope may command and teach, under the prerogative of supremacy, many things in relation to morals which he does not teach under the prerogative of infallibility,[13] but his command and instruction in respect to them is of binding force by the terms of the *Pastor Æternus*.[14]

In support of the above conclusions we would refer to the treatise in which Cardinal Merry del Val [15] treats of the prerogative of supremacy and the prerogative of infallibility. He states as follows (pp. 17–18):

"The doctrine of the Infallibility of S. Peter and of his successors consists in this, and in this only, that by the special assistance of the Holy Spirit, Who, according to our Lord's promise, is with the Church unto the end of time, the successors of S. Peter inviolably keep and faithfully expound the revelation or deposit of faith delivered through the Apostles. Hence, that when, in the exercise of his Apostolic Office, the successor of Peter speaks as the Chief Shepherd of the whole flock, and expressly declares by what is called a DEFINITION, which he makes known as such, that a doctrine is a revealed doctrine and part of the deposit of the Christian Faith, then, he will not and cannot fall into error."

[13] As to freedom of conscience in these matters, see chapter II, pp. 20–21; also chapter IX, p. 182 *infra*.

[14] See *infra* p. 65 also p. 84.

[15] *The Truth of Papal Claims*, pp. 17–22.

". . . By Infallibility," [the Cardinal says, pp. 18–19] "we do not mean 'impeccability' or sinlessness in the person of S. Peter or of his successors, who are accountable to God for their own consciences and their own lives like every other human being; . . . Nor do we mean that every utterance that proceeds from the Pope's mouth, or from the Pope's pen, is infallible because it is his. Great as our filial duty of reverence is towards whatever he may say, great as our duty of obedience must be to the guidance of the Chief Shepherd, we do not hold that every word of his is infallible, or that he must always be right. Much less do we dream of teaching that he is infallible, or in any degree superior to other men, when he speaks on matters that are scientific, or historical, or political, or that he may not make mistakes of judgment in dealing with contemporary events, with men and things."

When the Cardinal removes scientific, historical and political matters from the Pope's infallibility, he must mean scientific, historical or political matters that do not involve or relate to morals; otherwise there would be little left of matters belonging to faith and morals for the Pope's jurisdiction.[16]

We quote the Cardinal again (p. 19):

"Now, upon what grounds do we rest our belief in this prerogative of infallibility thus explained? The answer is: Upon the same grounds as we assert our belief in the supremacy. The infallibility follows necessarily from the supremacy."

[16] Of how much there is of truth that does not involve morals will appear as we proceed with our inquiry.

He continues (p. 21):

"Once you admit the supremacy, the infallibility follows as a necessary consequence. We have here two different terms which *practically* signify the same thing. For surely in real life, and as far as the *practical* conduct of men is concerned, to be free from error and to be above all possible accusation of error, come practically to one and the same thing."

The Cardinal concludes (p. 22):

"Had anyone the right to say that the Pope, who, by virtue of his supremacy, is the ultimate court of appeal in matters of faith, is mistaken, that person would also have the right to disobey him, and this right to disobey him would put an end to the supremacy."

The Cardinal makes a final comparison of the Papal infallibility with what he designates as the infallibility of a supreme court. It is difficult to follow the analogy. It would seem that he imputes infallibility to a supreme court because by the consent and authorization of the governed there is no appeal from its decision. That hardly constitutes infallibility, and is quite remote from the prerogative of infallibility in the Pope. The Cardinal overlooks the fact that, outside the Roman Church, government rests upon the consent of the governed, and that the authority of a supreme court is derived from the governed and to them such court is accountable. No such considerations apply either to Papal supremacy or Papal infallibility; authority in

neither case is derived from the governed, nor is the Pope responsible to them.[17]

It is with the prerogative of supremacy or the sovereignty over conduct or morals, not with the prerogative of infallibility or the sovereignty over truth, that our discussion here is concerned. They are different powers although interrelated, reciprocal and complementary, as the Cardinal has pointed out.

In the examination of Chapter III of the *Pastor Æternus* attention should be called, first, to the fact that the supreme jurisdiction of the Roman See is extended not only to matters which belong to faith, *i. e.*, religious matters in the strict sense of the word, but also to those which belong to morals, and those which appertain to the discipline and government of the Roman Church throughout the world; further, that the supreme power extends to *teaching* and to *ruling* the pastors of the whole Church and their flocks "in the way of salvation." The bishops are reduced to the level of the laity in the matter of submission to the will of the Ro-

[17] Latin theology keeps the dogma of infallibility within the realm of the unknown— ". . . in the twilight until wanted in the glare." The Pope is speaking infallibly if he is speaking *ex cathedra,* and he is speaking *ex cathedra* when he is speaking as *Pastor Æternus* with the intention of teaching infallible truth. If his utterance does not expressly declare itself as infallible the infallible intent may be gathered from the matter or from the occasion of the utterance (*C. E.,* vol. vii, p. 796 b, c). Thus, referring to certain teaching in the Bull *Unam Sanctam* of Pope Boniface VIII and its status in matter of infallibility, the *Catholic Encyclopedia* (vol. xii, p. 266 c) says: "This declaration, even if it be not one of those portions of the Bull in which the pope is defining a point of faith," (*i. e.,* defining infallibly) "is so clearly connected with the parts expressly stated to possess such character that it is held by theologians to be theologically certain. . . ."

man See, and the Pope is made absolute in the Church of Christ throughout the world in respect to matters belonging to morals.

Morality is defined by Roman Catholic authority as ". . . human conduct in so far as it is freely subordinated to the ideal of what is right and fitting. This ideal governing our free actions is common to the race," [18] and again, ethics is defined as ". . . the science of the moral rectitude of human acts in accordance with the first principles of natural reason." [19] With such conceptions of morals—and they are the only possible conceptions—jurisdiction over morals extends to conduct and opinion in every department of life where the question of right or wrong arises, and such is the jurisdiction claimed by the Pope, over all Christian people, as defined by the Constitution *Pastor Æternus*.[20]

A few weeks before the adoption of the Constitution *Pastor Æternus*, Lord Acton, referring to the expected legislation, declared:

"It makes civil legislation on all points of contract, marriage, education, clerical immunities, mortmain, even on many questions of taxation and Common Law, subject to the legislation of the Church, which would be simply the arbitrary will of the Pope. Most assuredly,"

[18] *C. E.*, vol. x, p. 559 a.

[19] *Ibid.*, vol. v, p. 556 b, c.

[20] In this connection reference may be made to the ancient claims of the Popes that sin is the basis of Papal jurisdiction. As, owing to the corruption of man's nature, sin is found everywhere, the jurisdiction claimed was of quite universal sweep. See discussion on Letter of Innocent III, in Carlyle, vol. ii, pp. 219–220; W. A. Dunning, *A History of Political Theories, Ancient and Medieval*, vol. 1, p. 173, note 6.

he said, "no man accepting such a code could be a loyal subject, or fit for the enjoyment of political privileges." [21]

Lord Acton's words do not seem to go too far: if the membership of the Roman Church is excluded from the jurisdiction of the State in all matters that may reasonably be conceived of as belonging to morals and to the discipline and government of a universal Church, the jurisdiction of the State in those respects is limited to citizens who are not Roman Catholics. But as though to gather and absorb into its jurisdiction any remnants of the moral, intellectual or religious life of man which the State might otherwise claim for itself, the Roman Church teaches, as we have seen, that if a conflict arise with the State as to whether a given matter is in the jurisdiction of the Church or the State, the State must submit to the determination of the Church.

The decrees of the *Pastor Æternus* in terms run through space, time and eternity. No other assertion of human power has ever made such awful and annihilating claims. The primacy of the Roman See is asserted over the whole world; the Pope is declared Prince of the Apostles, Vicar of Christ, head of the whole Church, Father and Teacher of all Christians. Authority is thus asserted over all Christians, notwithstanding the fact that centuries before the Eastern Church and a large part of the Western Church repudiated this very authority. The *Pastor Æternus* declared that its doctrine was in accordance with the ancient and constant faith of the universal Church, and

[21] *Correspondence,* vol. i, p. 103.

yet this repudiation by a large part of Christendom testified to the contrary. Furthermore, the claim was denied by some of the most eminent Roman Catholics of the day. Dr. Döllinger, the leading ecclesiastical scholar of the Roman Church, denied it and was excommunicated.[22] Lord Acton denied it,[23] and so did Montalembert,[24] the Roman Catholic statesman of France. The Bishops of Ireland, in an address to their clergy and laity in 1826, had declared that at that time the *ancient faith* did not require belief or profession even in the infallibility of the Pope. ". . . they thought," said Cardinal Newman, "if they went so far as to ask themselves the question, that the definition of Papal Infallibility was simply impossible." [25] A similar opinion was expressed by the Archbishop of

[22] *C. E.*, vol. v, pp. 94 c, 98 d.

[23] Acton, *History*, pp. 492–550. Cardinal Gasquet, in his work *Lord Acton and His Circle*, p. 372, refers to Lord Acton as "the most erudite man of his generation."

[24] See Montalembert's letter published in the *London Times*, Monday, March 7, 1870. In this letter the writer declared that nobody had thought of advocating or raising the doctrines or pretensions of papal absolutism during the period of his public life. "Never, thank Heaven, have I thought, said or written anything favourable . . . to that absolutism of Rome of which the speech that you quote (one of Montalembert's) disputed the existence, even in the middle ages, but which today forms the symbol and the programme of the faction dominant among us."
Reference should be made to the intense opposition in the Vatican Council of such great bishops as Darboy, Hefele, Strossmayer and others (C. E., vol. xv, pp. 305–306 c)—though they later made their submission; to the fact that out of 601 bishops attending the Council over 150 absented themselves at the final vote, and that in that vote, a noble remnant, consisting of Bishop Riccio of Cajazzo, Italy, and Bishop Edward Fitzgerald of Little Rock, Arkansas, voted "no." (*C. E.*, vol. xv, p. 307 a, b).

[25] *Difficulties of Anglicans*, Letter to the Duke of Norfolk, vol. ii, p. 189.

Dublin in a Pastoral in 1793.[26] Cardinal Newman further said:

"Even among those at the Vatican Council, who themselves personally believed in it, I believe there were Bishops who, until the actual definition had been passed, thought that such a definition could not be made." [27]

It is clear from these statements that eminent Roman Catholics living at the time of the adoption of the Constitution *Pastor Æternus* did not recognize its doctrine as being in accordance with the ancient faith or with the faith known to them. It is, therefore, to be presumed that generations who had lived and died before the Vatican Council did not know of the doctrine as an article of faith; yet by this Constitution knowledge was imputed to them. It became in terms a piece of retroactive legislation affecting the moral status of Christians who had lived and died in a different belief. But it assumed to be not only retroactive over morals but retroactive over history. The words of dead Popes, terrible in fanaticism and contradicting the essential principles of Christianity, to which previously no authority *de fide* was necessarily attached, were now invested with a new and awful authority, and abominable doctrines that might have died out in virtue of inherent error were given an authority they did not formerly possess and were perpetuated as authoritative in the Church. Under the *Pastor Æternus* it must now be believed *de fide* that these doctrines,

[26] *Ibid.*, p. 188.
[27] *Ibid.*, p. 189.

if not infallible truths, were nevertheless, under the prerogative of supremacy, authoritative, and binding Christians to obedience.

The mind of Lord Acton was quick to discern these monstrous consequences. In March, 1870, he wrote to Mr. Gladstone in reference to the proposed Constitution:

". . . Catholics will be bound, not only by the will of future Popes, but by that of former Popes, so far as it has been solemnly declared. They will not be at liberty to reject the deposing power, or the system of the Inquisition, or any other criminal practice or idea which has been established under penalty of excommunication." [28]

The teaching of Popes long entombed, he claimed, was now to become invested with binding force. "Rome," he said, "taught for four centuries and more that no Catholic could be saved who denied that heretics ought to be put to death." [29] In his letters to the *Times*, November-December, 1874, he asserted that

[28] *Correspondence*, vol. i, p. 108. He commented further on the proceedings of the Council as follows: "They might. . . conceivably contrive to bind and limit dogmatic infallibility with conditions so stringent as to evade many of the objections taken from the examples of history; but in requiring submission to Papal decrees on matters not articles of faith, they were approving that of which they knew the character; they were confirming, without let or question, a power they saw in daily exercise; they were investing with new authority the existing bulls, and giving unqualified sanction to the inquisitor and the index, to the murder of heretics and the deposing of kings. They approved what they were called on to reform, and blessed with their lips what their hearts knew to be accursed." *Letters of Lord Acton to Mary Gladstone*, Introductory Memoir, p. 49).

[29] *Correspondence*, vol. i, p. 108.

Pope Pius V had approved of the plot to murder Queen Elizabeth;[30] that Pius V declared "that he was willing to spare a culprit guilty of a hundred murders rather than a single notorious heretic;"[31] that Pius V "assured the King of France that he must not spare the Huguenots, because of their offences against God;"[32] that "when Gregory (XIII) was informed that the Huguenots were being slain over the whole of France, he sent word to the king that this was better news than a hundred battles of Lepanto;"[33] that after the massacre of St. Bartholomew "the Pope proclaimed a jubilee, principally to thank God for His great mercy, and to pray that the king might have constancy to pursue to the end the pious work he had begun;"[34] that "Urban II says positively that he deems the killing of excommunicated persons no murder if done from religious zeal only."[35]

Whether Lord Acton accepted, *ex animo*, the authority of the Constitution *Pastor Æternus* is a question. Having discharged his duty to his conscience by public statements, some of which we have quoted, that challenged the validity of that Constitution, and riddled with the shrapnel of historical facts the reasonableness of its provisions, he accepted it *pro forma*.[36]

[30] *Ibid.*, pp. 130–132.
[31] *Ibid.*, p. 130.
[32] *Ibid.*, p. 131.
[33] *Ibid.*, p. 133.
[34] *Ibid.*, p. 133.
[35] *Ibid.*, p. 139.
[36] Gasquet, *Lord Acton and His Circle*, pp. 366–368. Cardinal Gasquet prints Lord Acton's letters expressing his *pro forma* acceptance, but not the letters from which we have quoted above.

So he escaped an excommunication which even Pope Pius IX dared not launch against the proudest intellect in Europe, although its possessor made public reference to the Vatican Council as " . . . neither legitimate in constitution, free in action, nor unanimous in doctrine . . . ," [37] and declared it was not hopeless "to make the evils of Ultramontanism [38] so manifest that men will shrink from them, and so explain away or stultify the Vatican Council as to make it innocuous." [39] Referring to those Bishops at the Vatican Council who, to the end, had opposed the adoption of the Constitution, Lord Acton said:

"Looking to the immediate future, they were persuaded that an irresistible reaction was at hand, and that the decrees of the Vatican Council would fade away and be dissolved by a power mightier than the Episcopate and a process less perilous than schism. Their disbelief in the validity of its work was so pro-

[37] Acton, *History,* p. 550.

[38] The *Catholic Encyclopedia,* vol. xv, p. 125 a, defines the word "Ultramontanism" as "a term used to denote integral and active (Roman) Catholicism, because it recognizes as its spiritual head the pope, who, for the greater part of Europe, is a dweller beyond the mountains (*ultra montes*), that is, beyond the Alps."

Cardinal Manning said in 1872, and he would seem to have spoken very truly:

"The pretence of distinguishing between Ultramontanism and (Roman) Catholicism is too stale to deceive any Catholic. The Holy See is Ultramontane, the Vatican Council was Ultramontane, the whole Episcopate is Ultramontane, the whole Priesthood, the whole body of the Faithful throughout all nations, excepting only a handful here and there of rationalistic or liberal Catholics, all are Ultramontanes. Ultramontanism is Popery, and Popery is (Roman) Catholicism." (*Sermons,* vol. ii, Introduction, p. li).

[39] Acton, *Correspondence,* vol. i, p. 147.

found that they were convinced that it would perish without violence, and they resolved to spare the Pope and themselves the indignity of a rupture." [40]

But Lord Acton's just convictions were to be frustrated and his noble hopes disappointed. There has been a marked reassertion of the decrees of the Vatican Council in Papal Encyclicals, in the treatises of Roman Catholic scholarship, and in the teaching of youth in Roman Catholic Schools.[41]

An authoritative opinion of the authority of the Pope in the minds of the powerful party which enforced the adoption of the Constitution *Pastor Æternus*, is found in a sermon preached by Cardinal Manning at the Pro-cathedral of Kensington in 1868, wherein he represents the Pope as capable of delivering the following Allocution to the world:

"I say I am liberated from all civil subjection; that my Lord made me the subject of no one on earth, king or otherwise; that in His right I am sovereign. I acknowledge no civil superior; I am the subject of no prince; and I claim more than this: I claim to be the supreme judge on earth, and director of the consciences of men—of the peasant that tills the field, and the prince that sits on the throne—of the household that lives in the shade of privacy, and the legislature that makes laws for kingdoms. I am the sole last supreme judge on earth of what is right and wrong. Your progress is departure from Christian civilisation; in that

[40] *History*, p. 549; see also Lord Acton's Letters to *The Times* on the Vatican Decrees, *Correspondence*, vol. i, p. 119.

[41] See *infra*, chapters VI, VII, XIV.

path you may have many companions, but me you will not find." [42]

The Church of Rome now requires the profession of the belief of all things declared by the Vatican Council, especially concerning the Primacy and the Infallibility of the Roman Pontiff, *as an integral part of its faith:*

"I likewise undoubtingly receive and profess all other things delivered, defined and declared by the Sacred Canons and General Councils, and particularly by the Holy Council of Trent and by the Œcumenical Vatican Council especially concerning the primacy and infallible *magisterium* of the Roman Pontiff; and I condemn, reject and anathematize all things contrary thereto, and all heresies which the Church has condemned, rejected and anathematized." [43]

[42] *Sermons,* vol. ii, pp. 97–98.

The teaching in Roman Catholic schools is a condensation of Cardinal Manning's dramatic words. Thus, the treatise on Dogma in the Course of Religious Instruction of the Institute of the Brothers of the Christian Schools teaches, (p. 480): "The Pope has no superior here below; he is subject to God alone." See p. 267, note 22, *infra.*

[43] *"Cetera item omnia a sacris Canonibus et Œcumenicis Conciliis, ac præcipue a sacrosancta Tridentina Synodo et ab Œcumenico Concilio Vaticano tradita, definita ac declarata, præsertim de Romani Pontificis primatu et infallibili magisterio, indubitanter recipio atque profiteor, simulque contraria omnia, atque hæreses quascunque ab Ecclesia damnatas et reiectas et anathematizatas, ego pariter damno, reiicio et anathematizo.* See Woywod, vol. ii, p. 534.

CHAPTER V

THE *SYLLABUS* OF POPE PIUS IX

The long pontificate of Pope Pius IX (1846–1878) covered a tempestuous period of history throughout Continental Europe and especially in Italy. He was the last of the Popes to hold the Temporal Power or secular monarchy over the Papal States or States of the Church, a territory comprising in 1853 some sixteen thousand square miles and upwards of three million people.[1]

The troubles of the pontificate of Pope Pius IX were occasioned largely by the claim of the Papacy to temporal power, and the efforts of the Pope to repel the forces that menaced its continuance. It is important to distinguish between the pontifical sovereignty of the Bishop of Rome over Christendom, in virtue of his

[1] *E. B.*, vol. xxv, p. 805 d.
The Temporal Power developed from the gift in 754 by Pepin, the usurper of the Frankish throne, of territory wrested from the Emperor of the East (See L. Duchesne, *The Beginnings of the Temporal Sovereignty of the Popes*, p. 37). It was given to the Pope, or restored to him in recognition of an earlier title, in return for the purely political interference of the Vicar of Christ in deposing the degenerate King Childeric, and seating the usurping Pepin in his place, with right of succession in Pepin's heirs. (Bryce, p. 39; *C. E.*, vol. xiv, p. 259 d). Thus the way was opened for the Empire of Charlemagne (Pepin's son), the joint political creation of Charlemagne and Pope Leo III in 800. The territory given by Pepin to the Pope became the States of the Church—the Patrimony of St. Peter—and the Temporal Power made its appearance in history. The territory of the States of the Church was added to by the gifts of the Countess Matilda of Tuscany. (*C. E.*, vol. x, p, 50 a).

office as Pope, and the Temporal Power vested in the Bishop of Rome over the Papal States as their secular prince or monarch. The pontifical sovereignty and the temporal sovereignty had no constitutional connection, but a thousand years of history had united them in such fashion that in the opinion of many, and certainly in the mind of Pius IX, the Temporal Power was necessary to the pontifical sovereignty, if not divinely ordained.[2] The strategical and material value of the Temporal Power to the Papacy was very great. The Pope's prestige among the monarchs of Europe and much of his political influence had long been supported by it. The taxation of the States of the Church produced a large Papal revenue, and some three million subjects had sustained Papal fleets and armies and surrounded the temporal throne with all the power and splendor of an earthly monarch. It would seem, therefore, that it is not unjust to ascribe to the threatened loss of the States of the Church a reason for profound anxiety and distress of mind in the reigning Pontiff. The situation in respect to the Temporal Power was aggravated by the Liberalism of the nineteenth century, which made the era memorable. In this Liberalism the Pope detected an ultimate skepticism that might invade the Church and impair his pontifical sovereignty.

The whole century was one of change in human thought and in human institutions. Through it surged the currents of democratic life released by the French Revolution, and they beat with force and fury upon both the Spiritual and the Temporal Thrones at Rome.

[2] *Syllabus,* Propositions LXXV, LXXVI and note; *infra* appendix II, p. 302.

Italy was stirring with the spirit of national unity and a sense of the Civic Primacy of her people. The idea of a united Italian people menaced the Temporal Power and the security of the Pope's government over the States of the Church.

The difficulties with which Pope Pius IX was called to contend would have taxed the genius of a great statesman. There may be a difference of opinion as to the ability which he displayed in his effort to command the situation, but there can be no doubt of his fidelity to the great trust committed to him, as he understood it.[3]

Toward secular Liberalism, even in the government of the Papal States, the Pope had at first shown favor, but he very quickly took alarm in his experience with the turbulent spirit of the times and his liberal attitude was converted to one of grave apprehension. Under popular demand he yielded a constitution to the Papal States that for a time changed their government from an absolute to a constitutional monarchy, but riot after riot indicated the popular unrest. Palma, a cleric and

[3] Dr. Döllinger, whom Pius IX subsequently excommunicated, in a notable passage, after referring to the Pope's irreproachable youth and his conscientious discharge of his episcopal duties before he was elected Pope, paid him this tribute: ". . . he has no other passion but that of doing good, no other ambition but to be beloved by his subjects. His day is divided between prayer and the labours of government; his relaxation is a walk in the garden, a visit to a church, a prison, or a charitable institution. Free from personal desires and from terrestrial bonds, he has no relatives, no favourites to provide for. For him the rights and powers of his office exist only for the sake of its duties. . . . Untouched by human folly, unmoved by human malice, he proceeds with a firm and regular step on his way, like the stars of heaven." *Kirche und Kirchen, Papsttum und Kirchenstaat,* pp. 625–626, quoted by Acton, *History,* pp. 365–366.

a friend of the Pope, was shot, and Rossi, the Papal Premier, was stabbed to death on his way to open the new constitutional parliament. The Pope himself was besieged in the palace of the Quirinal, from which he escaped in disguise to Gaëta, near Naples, where he assembled the Papal Court and government around him. Rome for a time was left to an unsuccessful experiment in popular government. The flight of the Pope before the resurgent forces of modern Italy ended his entente with Liberalism.[4] He appealed for aid to the powers of Europe, not to his Italian subjects, but to the ancient absolutism that lingered on, decrepit but persistent, in Spain, Naples, France and Austria.[5] More than with any other power the Pope allied himself with Louis Napoleon,[6] the usurper of France and a "dubious representative of the Lord's Anointed." His troops occupied the city of Rome. His army brought Pope Pius IX back from Gaëta to the Quirinal and supported him in the government of the Papal States until after the last session of the Vatican Council. But this support was withdrawn when the activities of the Hohenzollerns called for the presence of the French troops in another jurisdiction, and the shadow of the Franco-Prussian war fell on Europe.[7]

On the 16th of October, 1870, three months after the adjournment of the Vatican Council, a plebiscite

[4] *C. E.*, vol. xii, p. 135 c; vol. xiv, p. 266 b, c.

[5] *Ibid.*, vol. xii, p. 135 c.

[6] Referring to the election of Louis Napoleon as Prince President of France, Dr. Burgess, *The Sanctity of Law*, p. 221, says: "When thoroughly looked into later, it was discovered that the Roman Catholic Church was the great factor in the promotion of this result."

[7] *C. E.*, vol. xiv, p. 267 b.

or popular vote instituted by King Victor Emmanuel in Rome decided on union for the States of the Church with the new Kingdom of Italy. The popular vote was 133,681 in favor and 1,507 against the proposition.[8] The Civic Primacy of the Italian People had repudiated the Temporal Power of the Pope at the end of a thousand years. Upon its fall, the Pope, having excommunicated those who had joined in depriving him of the Temporal Power, retired within the Vatican in a voluntary imprisonment which the present Pope continues.[9] Under the aggression of New Italy, the Papal territorial possessions contracted to that palace and its gardens. Victor Emmanuel sat in the Pope's place on the temporal throne of the Kingdom of Rome. But the pontifical sovereignty claimed by the Pope over all Christians throughout the world was not affected.[10]

[8] *E. B.*, vol. xv, p. 60 d.

[9] *C. E.*, vol. xiv, p. 267 b, c.

[10] Dr. John Bassett Moore in his *Digest of International Law*, vol. i, p. 39, gives the following expression of the changes in Papal sovereignty after the fall of the Temporal Power: "The Pope," he says, "though deprived of the territorial dominion which he formerly enjoyed, holds, as sovereign pontiff and head of the Roman Catholic Church, an exceptional position. Though, in default of territory, he is not a temporal sovereign, he is in many respects treated as such." Dr. Moore then refers to the rights of active and passive legation and the special privileges of his envoys and Apostolic Nuncios, and to his practice of making treaties with the secular powers, which are called Concordats.

The distinction between the former Temporal Power and the Pontifical Sovereignty seems to be lost sight of at times even in enlightened circles. Mr. Walter Lippmann in his article "The Catholic Issue in Politics" in *Vanity Fair*, July, 1927, p. 31, referring to the article by the Hon. Alfred E. Smith in the *Atlantic Monthly*, May, 1927, p. 721, says: "For in denying the temporal power of the Pope, he (Governor Smith) does not fall into the very easy error of attributing universal power to the State."

It is obvious that Governor Smith could not deny the Temporal

Through this tempestuous period down to 1864 the distressed and anxious Pope issued Allocutions and Encyclical and Apostolical Letters, as occasion arose, condemning the errors of the time according to his pontifical opinion.[11] The language of these often indicates an anxious state of mind such as we have referred to, and, indeed, one that would seem to be hysterical.[12]

The various declarations of the Pope were gathered into a *Syllabus* [13] of condemned propositions, and on December, 8, 1864, Cardinal Antonelli, the Papal Secretary of State, sent this *Syllabus* by the Pope's command to all the bishops of the world.[14]

It needs but a reading of the *Syllabus* to understand the sensations which were created throughout the civilized world by its appearance. "Among the enemies of the Church," says the *Catholic Encyclopedia*,[15] "no papal utterance had stirred up such a commotion for many

Power which expired in 1870. It may be presumed that what Mr. Lippmann had in mind was the apparent irreconcilability of Governor Smith's assertion of his moral freedom with the *Pastor Æternus* and the teaching of his Church.

[11] *C. E.*, vol. xiv, p. 369 a, b.

[12] In the Encyclical *Quanta cura* which accompanied the *Syllabus*, the Pope referred to the "most gross evils of our most gloomy age"; "to the dreadful pests to be shunned, abhorred and avoided"; "to the monstrous portents of opinion"; "to the great perversity of depraved opinions." See Raulx, *Encyclique et Documents*, vol. i, pp. 4–14.

[13] The *Syllabus* is printed in full in Appendix II *infra* pp. 292–303.

[14] *C. E.*, vol. xiv, p. 369 a.

Lord Acton says (*History*, p. 496):

". . . he (Pope Pius IX) had a strong desire to establish certain cherished opinions of his own on a basis firm enough to outlast his time. They were collected in the Syllabus, which contained the essence of what he had written during many years, and was an abridgment of the lessons which his life had taught him."

[15] Vol. xiv, p. 368 c.

years." "Its publication," says Dr. Boudinhon, "aroused the most violent polemics. What was then called the Ultramontane party was loud in its praise; while the liberals treated it as a declaration of war made by the Church on modern society and civilization. Napoleon III's government forbade its publication, and suspended the newspaper *l'Univers* for having published it." [16]

The several propositions condemned in the *Syllabus*, bearing upon the relations of the Roman Church to the State, are the following: [17]

XV. It is not true that "every man is free to embrace and profess that religion which, guided by the light of reason, he shall consider true."

XXIV. It is not true that "the (Roman) Church has not the power of using force, nor has she any temporal power, direct or indirect."

XLII. It is not true that "in the case of conflicting laws enacted by the two powers, the civil law prevails."

XLV. It is not true that "the entire government of public schools in which the youth of a Christian state is educated, except (to a certain extent) in the case of episcopal seminaries, may and ought to appertain to the civil power, and belong to it so far that no other authority whatsoever shall be recognized as having any right to interfere in the discipline of the schools, the arrangement of the studies, the conferring of degrees, in the choice or approval of the teachers."

[16] *E. B.*, vol. xxvi, p. 281 d.

[17] Every proposition of the *Syllabus* is to be read as though it were preceded by the words: "It is not true that . . ." (*C. E.*, vol. xiv, p. 369 b). The use of the equivalent phrase: "It is false that . . ." before each proposition will sometimes more clearly bring out the meaning.

XLVII. It is not true that "the best theory of civil society requires that popular schools open to children of every class of the people, and, generally, all public institutes intended for instruction in letters and philosophical sciences and for carrying on the education of youth, should be freed from all ecclesiastical authority, control and interference, and should be fully subjected to the civil and political power at the pleasure of the rulers, and according to the standard of the prevalent opinions of the age."

XLVIII. It is not true that "(Roman) Catholics may approve of the system of educating youth, unconnected with (Roman) Catholic faith and the power of the (Roman) Church, and which regards the knowledge of merely natural things, and only, or at least primarily, the ends of earthly social life."

LV. It is not true that "the (Roman) Church ought to be separated from the State, and the State from the (Roman) Church."

LXXIII. It is not true that "in force of a merely civil contract there may exist between Christians a real marriage, and it is false to say either that the marriage contract between Christians is always a sacrament, or that there is no contract if the sacrament be excluded."

LXXIV. It is not true that "matrimonial causes and espousals belong by their nature to civil tribunals."

LXXVII. It is not true that "in the present day it is no longer expedient that the (Roman) Catholic religion should be held as the only religion of the State, to the exclusion of all other forms of worship."

LXXX. It is not true that "the Roman Pontiff can, and ought to, reconcile himself, and come to terms with progress, liberalism and modern civilization." [18]

[18] For these Propositions see Appendix II, *infra* pp. 294–303.

We come now to the important question of the binding power of the *Syllabus* on Roman Catholics. The teaching of the *Catholic Encyclopedia* [19] on this point is to the effect that there is no agreement in the Church whether each thesis condemned in the *Syllabus* is infallibly false merely because it is there condemned; that many theologians are of the opinion that to the *Syllabus* an infallible teaching authority is to be ascribed; others question this. "So long," this authority states, "as Rome has not decided the question, everyone is free to follow the opinion he chooses." So much for infallibility; but it is expressly stated that should the condemnation of the theses not possess infallibility "*nevertheless the binding force of the condemnation in regard to all the propositions is beyond doubt.*"

"For the Syllabus, as appears from the official communication of Cardinal Antonelli, is a decision given by the pope speaking as universal teacher and judge to (Roman) Catholics the world over. All (Roman) Catholics, therefore, are bound to accept the Syllabus. Exteriorly they may neither in word nor in writing oppose its contents; they must also assent to it interiorly." [20]

It is claimed that each one of the theses in the *Syllabus* was framed to meet a specific question arising in the political and religious world at the time, and that, therefore, a certain regard to this should influence the construction.

The *Catholic Encyclopedia* says:

[19] Vol. xiv, p. 368 d.
[20] *Ibid.*, pp. 368 d–369 a.

"First of all, one has to refer to the papal documents connected with each thesis. For, in accordance with the peculiar character of the Syllabus, the meaning of the thesis is determined by the meaning of the document it is drawn from." [21]

As an instance of what is required in the proper understanding of the propositions in the *Syllabus* we are told [22] that the eightieth thesis of the *Syllabus* applies to "false progress and false Liberalism and not to honest pioneer-work seeking to open out new fields to human activity." But the question remains: What is "false progress" and "false Liberalism"? Who shall decide? Rome says the Pope shall decide!

Again, in reference to the fifteenth thesis, it is held that there is a right interpretation arrived at by consulting the documents from which the thesis is taken; that it will be found

"that not every possible meaning is rejected, but only that particular meaning which, in 1848, Vigil, a Peruvian priest, attached to it" in a book he had written; that "Vigil maintained that man is to trust to his own human reason only and not to a Divine reason, *i. e.* to the truthful and omniscient God Who in supernatural revelation vouches for the truth of a religion." [23]

This sounds reasonable until one remembers that the "supernatural revelation" is only that received and taught by the Roman Catholic Church.

[21] *Ibid.*, p. 369 a.
[22] *Ibid.*, p. 369 a.
[23] *Ibid.*, p. 369 b.

Again,

"If, as for instance in thesis 42, the proposition, that in a conflict between civil and ecclesiastical laws the rights of the State should prevail, be condemned, then it does not follow from this thesis, that, in every conceivable case of conflicting laws the greater right is with the (Roman) Church. If, as in thesis 45, it be denied that the entire control of the public schools belongs exclusively to the State, then it is not maintained that their control does in no way concern the State, but only the (Roman) Church. If the modern claim of general separation between (Roman) Church and State is rejected, as in thesis 55, it does not follow that separation is not permissible in any case. If it be false to say that matrimony by its very nature is subject to the civil power (thesis 74), it is not necessarily correct to assert that it is in no way subject to the State." [24]

Again, the question is, who shall decide? and again the answer of Rome is, "the Pope."

By such reasoning is it sought to qualify the language of the *Syllabus* and to reconcile it to modern thought. The reasoning is referred to here out of considerations of fairness, and not because it is regarded as accomplishing the desired end.

The propositions of the *Syllabus* relating to the Church and the State have been considered in the Encyclical Letter *Immortale Dei* of Pope Leo XIII, and in the treatise [25] concerning that Encyclical by the Rev. Dr. John A. Ryan. The Encyclical and the treatise are examined in Chapters VI and VII. The

[24] *Ibid.*, p. 369 c.

[25] *The Church and the State,* see *infra* p. 114 note 1.

teaching and doctrine of the Church concerning the meaning and scope of the propositions are best ascertained from these authorities. It may be assumed that their conclusions leave nothing unsaid that may reconcile the *Syllabus*, as well as the decrees of the Vatican Council, with modern political thought and the reason of mankind. Summing up his own opinions, Dr. Ryan states that, in view of the principles he has reviewed in the pages of his treatise, the proscriptions contained in the *Syllabus* are justifiable and reasonable.[26]

[26] *Ibid.*, p. 58.

CHAPTER VI

THE ENCYCLICAL LETTER *IMMORTALE DEI*
(*The Christian Constitution of States*)

The Encyclical Letter *Immortale Dei*[1] of Pope Leo XIII is a document of the highest interest and authority on the relation of the Roman Catholic Church to the modern State. It was written in 1885. Its author was the ablest mind in the modern pontificate—a mind supported by an exalted character and a life of singular austerity. This Letter is by direct reference, as well as by the matter set forth, connected with the *Syllabus*[2] of Pope Pius IX, and it followed only fifteen years after the promulgation of the decrees of the Vatican Council.

The Reverend Dr. John A. Ryan, writing under the imprimatur of Archbishop (now Cardinal) Hayes, February 21, 1922, refers to it as

"The most authoritative doctrine that we possess regarding the nature, authority, and object of the State, and the relations that should subsist between the State and the (Roman) Church."[3]

Before proceeding, a few words should be said in

[1] Experience has demonstrated that quotations from this Letter, in argument, are met by the assertion that they are of no value because detached from the context; therefore the Letter has been set forth in full in appendix III hereto, pp. 304–329.

[2] *C. E.*, vol. xiv, p. 368 b; see appendix II, pp. 292–303.

[3] *The State and the Church,* preface p. v; see p. 114, note 1, *infra.*

explanation of the authority of Encyclical Letters. The *Catholic Encyclopedia* [4] defines "Encyclical (*Litteræ Encyclicæ*)" as follows:

"In modern times, usage has confined the term almost exclusively to certain papal documents which differ in their technical form from the ordinary style of either Bulls or Briefs, and which in their superscription are explicitly addressed to the patriarchs, primates, archbishops, and bishops of the Universal Church in communion with the Apostolic See."

It will be noted that the Encyclical *Immortale Dei* is so addressed, and also to all nations, as appears in the closing paragraphs (appendix III, p. 328). Again:

"From the nature of the case encyclicals addressed to the bishops of the world are generally concerned with matters which affect the welfare of the Church at large. They condemn some prevalent form of error, point out dangers which threaten faith or morals, exhort the faithful to constancy, or prescribe remedies for evils foreseen or already existent."

"Although it is only during the last three pontificates that the most important utterances of the Holy See have been given to the world in the shape of encyclicals, this form of Apostolic Letter has long been in occasional use." [5]

"As for the binding force of these documents it is generally admitted that the mere fact that the pope should have given to any of his utterances the form of an encyclical does not necessarily constitute it an ex-

[4] Vol. v, p. 413 c.
[5] *C. E.*, vol. v, pp. 413 d–414 a.

cathedra pronouncement and invest it with infallible authority. The degree in which the infallible magisterium of the Holy See is committed must be judged from the circumstances, and from the language used in the particular case." [6]

It is clear from this that an Encyclical may be issued under the prerogative of infallibility, and, therefore, demand belief that what it teaches is infallibly true. It may, on the other hand, be issued under the prerogative of supremacy and, therefore, demand obedience to what it requires. The teaching of an Encyclical is, therefore, binding on obedience. This conclusion is supported by a recent article in *America*, the well known Roman Catholic journal, which, in treating of the force of Papal Encyclicals, says:

". . . a Papal Encyclical invariably demands from (Roman) Catholics, first, respect, in view of the source from which it emanates, and next absolute obedience . . . Hence the genuine (Roman) Catholic at once yields respect and obedience." [7]

In the opening paragraphs of his Encyclical [8] Pope Leo says:

[6] *Ibid.*, p. 414 b.

[7] April 30, 1927, p. 55. The article appeared in connection with the discussion of Governor Smith's magazine article heretofore referred to. A New York editor had said, "They (the Encyclicals) do not bind American (Roman) Catholics, as is shown by the fact that the Governor never heard of them." "The statement, as it stands," said *America*, "is gravely erroneous."

In his article, p. 724, Governor Smith declined responsibility for the statements of Papal Encyclicals, but it would seem that if Roman Catholics admit that such Encyclicals demand obedience from them then all Roman Catholics accept responsibility for them.

[8] Appendix III, p. 304 *infra*.

"And in truth, wherever the (Roman) Church has set her foot, she has straightway changed the face of things, and has attempered the moral tone of the people with a new civilization, and with virtues before unknown. All nations which have yielded to her sway have become eminent for their culture, their sense of justice, and the glory of their high deeds."

These words reveal very clearly that the religious interpretation of history adopted by many Roman Catholic scholars is accepted and applied by the venerable writer. It is an interpretation that rests upon the belief of a revelation from God, accepted by the individual, with which the facts of history—if there be an apparent conflict—must be reconciled at the expense of the latter rather than at the expense of the former.[9]

[9] Cardinal Newman in his Letter to the Duke of Norfolk, *Difficulties of Anglicans,* vol. ii, p. 313, referring to "doctrines which lie beyond the direct evidence of history," says that ". . . the immediate motive in the mind of a (Roman) Catholic for his reception of them is, not that they are proved to him by Reason or by History, but because Revelation has declared them by means of that high ecclesiastical *Magisterium* which is their legitimate exponent." (This *Magisterium* is, as we have seen, the Pope).
Cardinal Newman's treatment of historical events illustrates this religious interpretation of history. In the same Letter he points to Napoleon's disastrous flight from Russia as the result of the retributive action of God in pursuance of Napoleon's excommunication by Pope Pius VII. But he apparently saw no divine retribution in the flight of Pope Pius IX to Gaëta, nor in the humiliating days of 1870 when the army of New Italy invaded the Eternal City. Lord Acton refers to the teaching of Fénelon that the Church is supreme over fact as over doctrine " . . . because she is the supreme expounder of tradition, which is a chain of facts"; and he quotes, as we have noted (*supra* p. 35, note 42) from the Dogmatic Commission of the Vatican Council that "the existence of tradition has nothing to do with evidence, and that objections taken from history are not valid when contradicted by ecclesiastical decrees. Authority [Lord Acton comments] must conquer history." (*History,* p. 515).

Pope Leo in the paragraph last quoted forgets the condition of Catholic Europe in 1049 as recorded by St. Bruno,[10] or in 1075 as recorded by Pope Gregory VII,[11] or in the sixteenth century as recorded by the Venetian Ambassador at the Papal Court.[12] Even today great sections of territory in the immediate vicinity of the Holy See, where the Latin Church has exercised its sway for two thousand years, are, in culture, moral elevation and high deeds, a deplorable exhibit of the historical claims of Pope Leo. Protestant States that long ago rejected the Church of Rome compare favorably, to say the least, with Roman Catholic States, *e. g.*, England with Spain, Sweden or Norway with Italy or Mexico, Holland with Belgium. The mind of the reader will immediately revert to the condition of the Papal States before 1870, and to certain sections of Spanish America and the Philippines.[13]

[10] *C. E.*, vol. vi, p. 793 a
[11] *Ibid.*, p. 793 b
[12] *Ibid.*, vol. iv, p. 438 a
[13] It is 400 years since the Roman Catholic Church entered on its work in Mexico. For much of that time it has been the State Church. From 1524 to 1813 it set up and maintained the Spanish Inquisition (C. E., vol. x, pp. 262–263). It acquired property estimated at from $100,000,000. to $250,000,000. (*Pastoral Letter of the Catholic Episcopate of the United States on the Religious Situation in Mexico,* December, 1926). Its membership nominally embraced 15,000,000 out of a population of 15,200,000 (*Statesman's Year Book,* 1927). Mr. William D. Guthrie in his *Opinion to the American Hierarchy on the Religious Situation in Mexico* (*New York Times,* December 5, 1926), stated that in Mexico ninety-five per cent. of those professing any religion were Roman Catholics.
In view of the facts and figures presented, Roman Catholicism seems to have failed in Christianizing the Mexican people at large. Current events proclaim a situation there that cannot be reconciled to Christianity, and the Pastoral Letter above mentioned asserts that an attempt is being made to destroy religion and that society

Pope Leo proceeds then to point out the development of human society from man's natural instincts toward a social life, and maintains that every civilized community requires, in the nature of things, "a ruling authority," that is, the civil authority, which, he says " . . . no less than society itself, has its source in nature, and has, consequently, God for its author. Hence it follows that all public power must proceed from God. . . . *There is no power but from God.* (Rom. xiii, 1.)" [14]

He maintains that the "right to rule" is not bound up with any special form of government, provided only that it ensures the general welfare; that if civil authority is unjustly exercised in a manner hurtful to the people the Almighty will, one day, bring such civil authority to account. These would all seem to be truisms developing out of the doctrine that God is all powerful and that his moral law operates in the affairs of men.

there has been marching not in advance but in a circle back to primitive paganism.

The facts do not sustain the historical thesis laid down by Pope Leo XIII that salutary developments have followed wherever the Roman Church "has set her foot."

For conditions in parts of the Philippines following the control of the Friars through a long period of years, consult Senate Document No. 190, 56th Congress, second session; also Kohlsaat, *From McKinley to Harding,* pp. 110–118. In the final expulsion of the Friars several noble spirits co-operated—President Roosevelt, Pope Leo XIII, Cardinal Gibbons, and Father Vattman, a Roman Catholic Chaplain in the United States Army.

[14] Pope Leo in the Encyclical Letter on Human Liberty (*Libertas Præstantissimum*), G. E. L., p. 162, says:

" . . . it is not of itself wrong to prefer a democratic form of government, if only the (Roman) Catholic doctrine be maintained as to the origin and exercise of power."

The Pope lays special emphasis on the divine basis of government and authority, and on all *political power* and authority, as proceeding from God. But it is to be remembered that the Pope claims to be the Vicegerent of that God on earth! He is the sole representative on earth of God from whom all valid political power proceeds. When Roman Catholics, in accordance with Pope Leo's doctrine, recognize God as the source and sanction of the legitimate power of civil governments, the recognition, with them, must include a certain political jurisdiction *jure divino* for the Pope, in virtue of their recognition of him as holding ". . . upon this earth the place of God Almighty. . . ." [15] An immediate and direct connection, in theory, is thus established between the Pope and the civil government—the initial union of Church and State. The lines of Papal claims and theories are so drawn as to make it impossible for Roman Catholics to accept the theory of God as the source and sanction of the authority of civil governments without *ipso facto* allocating jurisdiction *jure divino* over such governments in the Pope as that God's representative on earth.[16] Thus, at the very threshold, the political question of the union of Church and State is raised and the teaching of the Pope becomes as much a political disquisition as though it were imparted by a secular authority. A question that is as much temporal

[15] See Encyclical Letter of Pope Leo XIII, The Reunion of Christendom (*Præclara Gratulationis Publicæ*), in *G. E. L.*, p. 304.

[16] Dr. Burgess, *The Sanctity of Law*, p. 46, has given a forcible expression to the historic claim of the Papacy in these respects as being " . . . sole original organ for the revelation of the divine will to man regarding government and conduct and sole transmitter of it to the secular rulers, who must all accept and execute it in exact accord with the papal interpretation."

as spiritual is treated of, and the field of politics is actively occupied by one who claims to be the spiritual head of Christendom.

The Pope advances next to the claim that the State is clearly bound to make a "*public profession of religion,*" and that must be the Roman Catholic religion.

". . . the chief duty of all men is to cling to religion in both its teaching and practice—not such religion as they may have a preference for, but the religion which God enjoins, and which certain and most clear marks show to be the only one true religion— . . ."

His conclusion is as follows:

"Wherefore, for this purpose, care must especially be taken to preserve unharmed and unimpeded the religion whereof the practice is the link connecting man with God." ". . . It cannot be difficult," the Pope asserts, "to find out which is the true religion, if only it be sought with an earnest and unbiassed mind."

This religion, Pope Leo later makes clear, is the religion in respect to which God has willed that he (the Pope), "should be the head of all, and the chief and unerring teacher of truth, to whom He has given *the keys of the kingdom of heaven.*"

The conclusion is that in Roman Catholic theory the ideal secular State is bound to profess the Roman Catholic religion. The Pope here determines a civic question, as a paramount sovereignty over the State; he determines for his subjects within the State a fundamental principle of civil authority. It would seem to be a political pronouncement, whatever may be its religious connotation.

Pope Leo claims that although the Roman Catholic Church is made up of men, just as civil society is, yet because it is supernatural and spiritual, and because its end " . . . is by far the noblest of ends, so is its authority the most exalted of all authority, nor can it be looked upon as inferior to the civil power, or in any manner dependent upon it." The Church, he holds, is a perfect society, possessing by the will of its Founder all needful provision for its maintenance and action.

Pope Leo then proceeds to point out certain features or powers of the Church—all being the indicia of political sovereignty—that Jesus Christ gave to His Apostles unrestrained authority in regard to things sacred, the power of making laws, the twofold right of judging and of punishing, which flow from that power. To the Roman Church ". . . God has assigned the charge of seeing to, and legislating for, all that concerns religion; of teaching all nations; . . . in short, of administering freely and without hindrance, in accordance with her own judgment, all matters that fall within its competence." This authority, perfect in itself, he says, and always meant to be unfettered, the Church has always claimed and the Popes have always defended, and secular princes and all invested with power to rule have themselves approved it, in theory alike and in practice, and " . . . have been wont to treat with the Church as with a supreme and legitimate power." Clearly the sovereignty of the Pope is unflinchingly asserted *in pari materia* with the sovereignty of the State.[17]

[17] Pope Leo says in the Encyclical on Human Liberty (*G. E. L.*, p. 160): "Others oppose not the existence of the (Roman) Church,

The Pope then pronounces the theory of the Two Powers, drawing forth from the remote past a theory that has plagued the political life of man for fourteen hundred years since it was first given a definite expression by Pope Gelasius I in the fifth century in the words: "There are, then, two authorities by which chiefly the world is ruled, the sacred authority of the prelates and the royal power." [18]

This theory inspired the action of Pope Leo III when he assumed to create the Holy Roman Empire in 800 and crowned Charlemagne Emperor at Rome.[19] It created centuries of conflict between Emperor and Pope; at one time a weapon in behalf of the Church in the hands of a Gregory VII, and at another a weapon

nor indeed could they; yet they despoil her of the nature and rights of a perfect society, and maintain that it does not belong to her to legislate, to judge, or to punish, but only to exhort, to advise, and to rule her subjects in accordance with their own consent and will. By such opinion they pervert the nature of this divine society, and attenuate and narrow its authority, its office of teacher, and its whole efficiency; and at the same time they aggrandize the power of the civil government to such extent as to subject the (Roman Catholic) Church of God to the empire and sway of the State, like any voluntary association of citizens. To refute completely such teaching, the arguments often used by the defenders of Christianity, and set forth by Us, especially in the Encyclical Letter *Immortale Dei,* are of great avail; for by those arguments it is proved that, by a divine provision, all the rights which essentially belong to a society that is legitimate, supreme, and perfect in all its parts exist in the (Roman) Church."

[18] Carlyle, vol. i, pp. 190–191; *C. E.* vol. vi, p. 406 b.

[19] "Nor could the spiritual head of Christendom dispense with the temporal head; without the Roman Empire there could not be a Roman nor by necessary consequence (as was believed) a Catholic and Apostolic Church . . . men could not separate in fact what was indissoluble in thought: Christianity seemed to stand or fall along with the great Christian State: they were but two names for the same thing." Bryce, pp. 46–47.

in behalf of the State in the hands of an Otto I or a Henry III. It supported the dream of Pope Innocent III of a world dominion under the pontifical sovereignty of the Pope,[20] and was applied by him in the Bull *Venerabilem* (1202) claiming that the Papacy was the authority by which the medieval Empire was created, and its translation from the Emperors ruling at Constantinople to the Emperors of the Holy Roman Empire consummated.[21] In the proud and splendid pontificate whose end marked the downfall of the medieval Papacy [22] it was inscribed by Pope Boniface VIII in the Bull *Unam Sanctam* (1302) proclaiming: "There are two swords (*i. e.*, powers), the spiritual and the temporal; the first borne by the (Roman) Church, the second for the (Roman) Church; the first by the hand of the priest, the second by that of the king, but under the direction of the priest. . . ." [23] It had reinforced the Bull of Pope Paul III (1538) deposing Henry VIII from the throne of England, and the Bull of Pope Pius V (1570) deposing Queen Elizabeth.[24] It had

[20] " . . . he availed himself of every opportunity to put in practice his grand concept of the papacy." *C. E.*, vol. viii, p. 13 d. "Throughout Christendom, in short, the spiritual lordship of Rome was recognized as involving in some measure the attributes of political sovereignty." Dunning, vol. i, p. 149.

[21] *C. E.*, vol. viii, p. 14 b.

[22] M. Creighton, *A History of the Papacy from the Great Schism to the Sack of Rome*, vol. i, p. 32.

[23] *C. E.*, vol. ii, p. 667 d.

[24] Pope Paul III began his Bull with the words of the Lord in Jeremiah, which he appropriated to himself: " . . . Behold, I have placed thee over peoples and kingdoms . . ." Pope Pius V began his Bull by a reference to himself as a prince "set up over all nations and all kingdoms, to root up, destroy, dissipate, disperse, plant and build . . ." See A. Lowndes, *Vindication of Anglican Orders*, vol. ii, appendices pp. xcvii and cxiv.

guided the hand of Pope Sixtus V in the Declaration (1585)[25] which nullified the law of France and declared void the right of succession of the Protestant Prince of Navarre to the French throne unless he embraced the Pope's religion.[26] It had supported Pope Innocent X in the Bull *Zelo domus Dei* [27] (1648) when with words of futile fury he declared void the Peace of Westphalia which ended a hundred years of war and released the heretics of Europe from the pontifical power of the Roman Pontiff.

In 1885 this theory of the Two Powers was invoked by Pope Leo XIII, to be passed on to the twentieth century as a living, animating and divine principle of political life in the modern state. "The Almighty," he says, "therefore, has appointed the charge of the human race between two powers, the ecclesiastical and the civil, the one being set over divine, the other over human things." In this he clearly apportions all power between the secular State and the Roman Catholic Church.[28] All other religious and ethical societies are

[25] M. Goldast, *Monarchiæ S. Romani Imperii,* vol. iii, pp. 124–126.

[26] It has been said that Henry thought Paris was worth a Mass and announced his conversion. It is known that he wrote "Religion is not changed as easily as a shirt," but in the end Henry accepted the Pope's religion in an obvious attempt to make the throne of France secure against treason and sedition. See *C. E.,* vol. vii, p. 226 a, b.

[27] Bryce, p. 392 and note b, citing *Bullarium Romanum,* vol. xvii. Innocent denounced the provisions of the Treaty as "null, vain, invalid, iniquitous, unjust, damnable, reprobate, inane, and void of effect." "In spite of which," says Lord Bryce, "they took effect."

[28] In the Encyclical on Human Liberty (*G. E. L.,* pp. 153–154), Pope Leo says: "To this society (the Roman Church) He (the Son of God) entrusted all the truths which he had taught, in order that it might keep and guard them and with lawful authority explain them; and at the same time He commanded all nations to hear the

excluded from the imperial partnership. Then, while claiming that each power has its " . . . orbit traced out within which the action of each is brought into play by its own native right," he expressly recognizes the difficulty of determining the line of jurisdiction between them. He says that God has marked it out, and that if it were not so, " . . . deplorable contentions and conflicts would often arise, and not infrequently men, like travelers at the meeting of two roads, would hesitate in anxiety and doubt, not knowing what course to follow. Two powers would be commanding contrary things, and it would be a dereliction of duty to disobey either of the two." He concludes that there must, accordingly, exist between these Two Powers a certain orderly connection, which may be compared to the union of the soul and body in man.

The Pope then declares to a listening world his solution of the endless conflict of Church and State, and sets forth the "clear" and "certain" means by which the line of jurisdiction between the Two Powers may be definitely and satisfactorily ascertained. Let us hear them:

"Whatever, therefore, in things human is of a sacred character, whatever belongs either of its own nature or by reason of the end to which it is referred, to the salvation of souls, or to the worship of God, is subject to the power and judgment of the (Roman) Church. Whatever is to be ranged under the civil and political order is rightly subject to the civil authority. Jesus Christ has Himself given command that what is Cæ-

voice of the (Roman) Church, as if it were His own, threatening those who would not hear it with everlasting perdition."

sar's is to be rendered to Cæsar, and that what belongs to God is to be rendered to God."

Thus the Pope ends the argument by a futile reassertion of the proposition to which the argument was addressed, and the weary and confused reader, after a tortuous course, has arrived at the point from which he set out.

The consequences of the theory of the Two Powers demonstrate its invalidity. Its advocates postulate as truth that the only parties to this partnership are the State, of which all persons in the community are citizens, and the Roman Catholic Church, of which only some persons in the community are members. The theory concretely comes to this: The population of the United States may be estimated at 100,000,000 people; 20,000,000 of these are Roman Catholics. In Pope Leo's theory the charge of the 100,000,000 people in the United States is appointed between the State and the Roman Catholic Church—a proposition that would seem to invite a vigorous protest. The theory of the Two Powers could be addressed with reason to the human mind in the Middle Ages, for that theory, as we have seen, was then the basis of the constitution of the State and of the framework of society. But it is not part of the constitution of the modern State. It is expressly repudiated in the Constitution of the United States: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." [29] Its assertion, as objective truth, by the Pope, in the life of the world today, is analogous

[29] Amendment I.

to the assertion of astrology as a science or a geocentric universe as a fact.

The Pope next recognizes "Concordats" between his Church and the State as a possible *modus vivendi* for the sake, he says, of peace and liberty; but he is careful to use language showing that in subscribing to Concordats the Church does so, not in recognition of any right in the State, but purely out of grace and favor, giving full proof of the "kindliness and indulgence" of the Church.

A eulogy of the Roman Church and the State, united according to the Pope's views, occupies several pages. He laments the time past when " . . . the (Roman Catholic) religion instituted by Jesus Christ, established firmly in befitting dignity, flourished everywhere, by the favor of princes and the legitimate protection of magistrates; and," he says, "Church and State were happily united in concord and friendly interchange of good offices." This reference is, of course, to the medieval union of Church and State, to which the Pope immediately attributes the achievements of civilization over a period of a thousand years. He yearns for that union and says, in effect, that had it continued more important results would have been obtained. He inveighs against the lamentable rage for innovation in the sixteenth century which, he says, " . . . threw first of all into confusion the Christian religion, and next, . . . invaded the precincts of philosophy, whence it spread amongst all classes of society." He claims that it gave forth " . . . as from a fountain-head . . . tenets of unbridled license . . . wildly conceived and

boldly proclaimed . . . but . . . at variance on many points with not only the Christian, but even with the natural law."

Among these principles he enumerates:

(a) "that as all men are alike by race and nature, so in like manner all are equal in the control of their life."

The Declaration of Independence declares that "all men are created equal."

(b) "that each one is so far his own master as to be in no sense under the rule of any other individual."

The Declaration of Independence declares that all men "are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness."

(c) "that each is free to think on every subject just as he may choose, and to do whatever he may like to do."

The First Amendment of the Constitution of the United States provides that "Congress shall make no law . . . abridging the freedom of speech, or of the press. . . ."

(d) "that no man has any right to rule over other men."

The Declaration of Independence declares that ". . . governments are instituted among men, deriving their just powers from the consent of the governed. . . ."

It seems difficult to avoid the conclusion that the political reasoning of the Pontiff is in direct conflict with the declarations of American constitutional documents. This conclusion is further supported by his censorious reference that "in a society grounded upon

such maxims, all government is nothing more or less than the will of the people, and the people, being under the power of itself alone, is alone its own ruler."

He complains that "the authority of God is passed over in silence . . . as if there could be a government of which the whole origin and power and authority did not reside in God Himself." Pope Leo overlooks here the fact that those in favor of democratic government are not against God, or against a refusal to acknowledge government as having its origin in the Supreme Ruler of the Universe. They protest only against the recognition of a human Vicar of God on earth, because such recognition implies that the authority of civil government being derived from God must come by way of the Pope as His Vicar on earth.

The Pope then condemns the following principles as unjust and oppressive to the Roman Catholic Church and as "wholly at variance with the truth," to wit, that the State

". . . is not obliged to make public profession of any religion; or to inquire which of the very many religions is the only one true; or to prefer one religion to all the rest; or to show to any form of religion special favor; but, on the contrary, is bound to grant equal rights to every creed, . . ."

and lastly,

". . . that every one is to be free to follow whatever religion he prefers, or none at all . . ."

The American citizen in defense of his religious and intellectual liberty against this condemnation may

recite the First Amendment of the Constitution of the United States: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech. . . ."

From the principles that he has so vigorously condemned, the Pope says, the logical consequence flows, "that the judgment of each one's conscience is independent of all law." We had supposed that conscience in its nature was independent of law. If one is to be bound in his conscience by law, what, then, is the use of conscience? He complains that the "most unrestrained opinions may be openly expressed as to the practice or omission of divine worship; and that every one has unbounded license to think whatever he chooses and to publish abroad whatever he thinks." Again the only answer that the American citizen could make to these pontifical pronouncements would be to refer to Amendment I of the Constitution. One marvels at the charity and the indulgence of the State in permitting the publication among its people of sentiments so in conflict with its constitutional law and order. Its toleration seems really a verification of Pope Leo's charge that in the modern State everyone *has* unbounded license to think whatever he chooses and to publish abroad whatever he thinks. In the printing and publishing of his anti-constitutional views, advantage is taken by the Pope of the very constitutional freedom of expression which he so vigorously condemns.

The Pope complains that when the State rests on the foundations he has thus commented on, the Church is driven into an unrightful position; those who admin-

ister the civil power "lay down the law at their own will." As the people are supreme in the modern State it follows that the Pope's complaint really is that the people lay down the law at their own will. To complain of that is to complain of the American Constitution. The Pope says the people claim jurisdiction over the contract of marriage; they assume to regulate the amount of property that may be devoted to Church uses; and, lastly, hold that the Church of Rome ". . . differs in no respect from other societies in the State, . . ." and possesses no right nor any legal power of action save by the concession of the government. But these are the common and constitutional incidents in the modern State. Here it is clearly admitted that the Church of Rome demands recognition by the State as its inherent right to the exclusion of other religious societies. The union of the Roman Church and the State is advocated. The Pope immediately complains that in any State where the Church retains her inherent right, ". . . men forthwith begin to cry out that matters affecting the Church must be separated from those of the State." The American people had supposed that this cry had gone forth over a century ago and that the Church was now for all time effectually separated from the State.

The modern State with many religions, or no religion, is thus confronted with a Church sovereignty which is absolute within its jurisdiction over morals, *jure divino* and *de fide*, among the solidarity of its members within the State, and which protests the equality of all religions before the law. The plain

teaching of Pope Leo seems to be that every provision in the modern State safeguarding the equality of different religious groups, the exercise of the individual conscience, the separation of Church and State, the prohibition of laws respecting an establishment of religion; all these ought to be offered up in one awful sacrifice to the supremacy and the pontifical sovereignty of the Church of Rome.

The Pope next attacks what he call the sovereignty of the people, "and this without any reference to God . . . ," and the opinion that " . . . princes are nothing more than delegates chosen to carry out the will of the people." [30]

He protests against the view that there is no difference in matters of religion between forms that are unlike each other, or contrary, and claims that it leads to the rejection of all religion, and atheism. Conflicting modes of divine worship cannot all, he says, be " . . . equally acceptable to God." No one would dispute this proposition in the abstract; but, considering the conflict of opinion in the modern State, who is to determine which of the religions is acceptable to God? Pope Leo has no difficulty in answering the question since he postulates in his argument as a principle of political life that the Roman Catholic religion is one of the Two Powers, Church and State, and the *only* religion acceptable to God.[31] It is, he claims, the only

[30] *Vide supra* pp. 93–94, 104; *infra* pp. 114–115.

[31] Pope Leo says in the Encyclical on Human Liberty (*G. E. L.*, pp. 150–151): "Justice therefore forbids, and reason itself forbids, the State to be godless; or to adopt a line of action which would end

Church of Christ, "the true and *sole* teacher of virtue and guardian of morals." But these are conclusions from which by far the larger part of men who make up the modern State vehemently dissent.

"To wish the (Roman) Church," says Pope Leo, "to be subject to the civil power in the exercise of her duty is a great folly and a sheer injustice"; but the Pope expresses no objection that other churches should be so subject.

Pope Leo cites the Encyclical Letter *Mirari vos* (1832) in which, he says, his predecessor Gregory XVI "inveighed with weighty words against the sophisms . . . that no preference should be shown for any particular form of worship; that it is right for individuals to form their own personal judgments about religion; that each man's conscience is his sole and all-sufficing guide; and that it is lawful for every man to publish his own views, whatever they may be, and even to conspire against the State." He quotes the statement in the *Mirari vos* that those who desire that the Church be separated from the State " . . . yearn for a shameless liberty. . . ." To the like effect, he says, did Pope Pius IX brand publicly many false opinions. He quotes his words in the *Syllabus*, Proposition LV, condemning, as false, the statement that: "The (Roman) Church

in godlessness—namely, to treat the various religions (as they call them) alike, and to bestow upon them promiscuously equal rights and privileges. Since, then, the profession of one religion is necessary in the State, that religion must be professed which alone is true, and which can be recognized without difficulty, especially in (Roman) Catholic States, because the marks of truth are, as it were, engraven upon it. This religion, therefore, the rulers of the State must preserve and protect, if they would provide—as they should do—with prudence and usefulness for the good of the community."

must be separated from the State, and the State from the (Roman) Church." [32]

"From these pronouncements of the Popes," Pope Leo says, "it is evident that the origin of public power is to be sought for in God Himself, and not in the multitude, . . ." and that "it is not lawful for the State, any more than for the individual, either to disregard all religious duties or to hold in equal favor different kinds of religion. . . ." Here the attack on the principles of religious liberty reaches a climax. The equality of different religions before the law is declared to be "not lawful" and Amendment I of the Constitution of the United States is thus repudiated.

It may be asked whether to hold in equal favor different kinds of religion, would not put a religion of licentious practices on an equal basis with a religion of moral practices. It clearly appears from the context that Pope Leo is not referring to religions of licentious practices. No civilized State assumes to recognize them. The State relies on the free moral consciousness of its people, where the Roman Catholic Church is not in power, in determining the moral standards of religions,

[32] In the Encyclical Letter *Libertas Præstantissimum,* on Human Liberty (see *G. E. L.,* p. 159), Pope Leo also refers to "that fatal principle of the separation of Church and State."

Governor Smith, in his *Atlantic Monthly* article, (May, 1927, p. 728), is interesting and startling when he says: "I believe in the absolute separation of Church and State. . . ." *L'Europe Nouvelle,* (July 16, 1927, p. 926), referring to the belief thus professed by Governor Smith, said: "This doctrine, in fact, deliberately contradicts that of the *Syllabus* of Pius IX. It seems, as regards the thoughts expressed, to be related to the liberal Catholicism of Montalembert; regarding its judicial foundation it does not differ materially from that on which the celebrated liberties of the ancient Gallican church were founded."

and only religions that measure up to that standard are held in equal favor. The exercise of the sovereignty of the United States in the dissolution of the Mormon Church and the confiscation of its property, pending its renunciation of polygamy, supports this statement. The right of determination by the State of the moral qualifications of religions is denied by Pope Leo. It is his doctrine that the State should accept the conclusions of the Roman Pontiff, to be carried into effect through the obedience owed to him *de fide* by the Roman Catholic solidarity in the State, and not through the exercise of a free consciousness of all citizens as demanded in loyalty to the State.

Pope Leo next teaches that " . . . no one of the several forms of government is in itself condemned . . ."; that it is not blameworthy for the people to have a share, greater or less in the government; and that no one should accuse the Roman Church of being opposed to liberty; but he adds that

"The (Roman) Church, indeed, deems it unlawful to place the various forms of divine worship on the same footing as the true religion, but does not, on that account, condemn those rulers who, for the sake of securing some great good or of hindering some great evil, allow patiently custom or usage to be a kind of sanction for each kind of religion having its place in the State."

No more complete a declaration could be made than this that in Roman Catholic doctrine the religious rights of non-Roman Catholics exist in the State only

by the grace and favor of the Church of Rome, and not in inherent right of objective truth.

We record our respectful notice of the Pope's declaration that "the (Roman) Catholic Church has always been the originator, the promoter, or the guardian" of whatever has been usefully established to curb the license of rulers who are opposed to the true interests of the people. But these are conclusions and not facts; difficult indeed, we should say, to reconcile at all points with the records of history. Innocent III obtained from King John the surrender of the English Kingdom to the Pope, to be ruled thereafter by English Kings as vassals of the Pope; annulled Magna Charta, and excommunicated the barons who exacted it from King John;[33] and Gregory XIII commended the King of France for the massacre of St. Bartholomew and urged the continuation of his efforts to extirpate heretics.[34]

The Pope refers to the troubled state of society and the afflictions of the Church of Rome, and asserts as the remedy the acceptance, not only in religion but in political matters, of the judgment and opinion of the Popes:

"If in the difficult times in which our lot is cast, (Roman) Catholics will give ear to Us, as it behooves them to do, they will readily see what are the duties of each one in matters of opinion as well as action. As regards opinion, whatever the Roman Pontiffs have hitherto taught, or shall hereafter teach, must be held

[33] *C. E.*, vol. viii, p. 15 c; vol. ix, p. 533 a.
[34] Acton, *Correspondence*, vol. i, pp. 132–135.

with a firm grasp of mind, and, so often as occasion requires, must be openly professed.

"Especially with reference to the so-called 'Liberties' which are so greatly coveted in these days, all must stand by the judgment of the Apostolic See, and have the same mind."

He then claims that war, wantonly and tyrannically waged against Christianity, is a better state of things than the modern form of government he has described. He recommends unity of aim and similarity in all plans of action. "Both these objects," he adds, "will be carried into effect without fail if all will follow the guidance of the Apostolic See as their rule of life and obey the bishops [35] whom the Holy Ghost has placed to rule the Church of God. . . . But in matters merely political, as for instance the best form of government, and this or that system of administration, a difference of opinion" (among Roman Catholics) he says, "is lawful." The necessary implication is that difference of opinion outside the "merely political" is not "lawful." Yet it is in that region of mixed moral and political questions that the constitution of the modern State requires that the consciousness and conscience of its citizens, whatever their religion, shall be free.

The Encyclical closes with an injunction that " . . . all should aim with one mind and purpose to make safe that which is the common object of all—the maintenance of (Roman Catholic) Religion and of the State." Pope Leo adds:

[35] All bishops are appointed by the Pope and hold office at his pleasure.

"This, Venerable Brethren, is what We have thought it Our duty to expound to all nations of the Catholic world touching the Christian constitution of States and the duties of individual citizens."

CHAPTER VII

ROMAN CATHOLIC COMMENT ON THE ENCYCLICAL LETTER *IMMORTALE DEI*

THE astounding claims of the Encyclical Letter called for some attempt to adjust it to modern political thought. The task was undertaken by a distinguished American authority, the Reverend John A. Ryan, in his treatise *The State and the Church.* [1]

Dr. Ryan first deals with Pope Leo's statement that the right of the State to rule is not necessarily bound up with any special mode of government, but, whatever be the form of government, rulers must bear in mind that God is the paramount ruler and their exemplar.

28 ". . . the 'divine right' to govern," [he says] "in the explanation of Pope Leo, attaches quite as truly to the president of a republic as to the head of a monarchy."

"The principal concern of Pope Leo . . . is not to show precisely how moral authority is conferred upon a ruler or government, but rather to point out the fact and the nature of that authority."

". . . whether there must be a popular election or some other manifestation of the will of the people,

[1] Written and edited for The Department of Social Action of the National Catholic Welfare Council by John A. Ryan, D.D., LL.D., and Moorhouse F. X. Millar, S. J. Imprimatur of Archbishop (now Cardinal) Hayes.

The numerals in the margin of this chapter refer to the pages of Dr. Ryan's treatise.

whether certain constitutional forms must be observed, whether the ruler derives his credentials from a happy concatenation of events,—are questions that Pope Leo does not touch in this place. Nor does he assert or imply that every actual ruler is legitimate and therefore possessed of moral authority. He merely assumes the case of a government that is legitimately established, and points out the moral character of its authority. His statements are directed against those who would deny the ethical nature of political power, not against any particular theory of the way in which it legitimately reaches the ruler."

Dr. Ryan does not explain by what right the Pope teaches "all nations of the Catholic world" that the "divine right" to govern attaches quite as truly to the president of a republic as to the head of a monarchy. So to teach is to teach that the Primacy of the People in government is a matter of indifference, and that one form of government is as near the divine ideal as the other. That is a very important and purely political question. It is quite beyond the Pope's jurisdiction when he is speaking in virtue of his spiritual pastorate. It is subject to protest when he is speaking for the political sovereignty of the Church of Rome to the political sovereignty of the modern State.

Premising that neither monarchy, aristocracy, nor democracy is unfavorably regarded by the Roman Church, Dr. Ryan proceeds to Pope Leo's teaching that the State should make "a public profession of religion," meaning, as we have seen, the Roman Catholic religion. 29
Dr. Ryan admits that the Pope's teaching is "a hard saying." The separation of the Roman Church

and the State, he says, " . . . which obtains substantially in the majority of countries, is generally understood as forbidding the State to make 'a public profession of religion.' Nevertheless, the logic of Pope Leo's argument is unassailable." There will be a wide difference of opinion with Dr. Ryan, and it is rather difficult to understand how any one who holds as true the principles underlying the guarantees of religious liberty in the Constitution of the United States can make these statements. When the Roman Church, claiming to be a paramount sovereignty in morals over a part of the State's electorate, teaches that the theory of its separation from the State is objective error, and that it is objectively true that a State should make a public profession of the Roman Catholic religion, not only is the express constitutional law of this country challenged, but the very political principles and philosophy on which the government of the country is based are, in effect, assailed. The rights of that section of the electorate which cannot accept the Roman Catholic religion are directly menaced. We quote again:

"Since the State is by far the most important of the secular societies to which man belongs, its obligation to recognize and profess religion" (the Roman Catholic religion) "is considerably greater and stricter than is the case with the lesser societies. And the failure of the State to discharge this obligation produces evil results of corresponding gravity. It exhibits in most extensive proportions the destructive power of bad example."

Dr. Ryan quotes from the Pastoral Letter of the American Hierarchy in 1920 a passage adopted in

that Letter from the Encyclical of Pope Benedict XV, *Ad beatissimi* (November 1, 1914), in which that Pontiff said:

"Let princes and rulers of the people bear this in 30
mind and bethink themselves whether it be wise and salutary, either for public authority or for the nations themselves, to set aside the holy religion of Jesus Christ, in which that very authority may find such powerful support and defense. Let them seriously consider whether it be the part of political wisdom to exclude from the ordinance of the State and from public instruction, the teaching of the Gospel and of the (Roman) Church. Only too well does experience show that when religion is banished, human authority totters to its fall."

The moment one realizes that the "holy religion of Jesus Christ" and the "teaching of the Church" referred to by Pope Benedict are the Roman Catholic religion and the Roman Catholic Church, the anti-constitutional character of the teaching becomes apparent. One must conclude that Pope Benedict XV and the American Hierarchy share with Dr. Ryan the view that there should, in objective truth, be a union of the State and the Roman Catholic Church in accordance with the theory of the Two Powers, but contrary to the present provisions of the Constitution of the United States.

Dr. Ryan proceeds then to an examination of the attempt made to enforce the theory of the separation of the Roman Church and the State. Instancing France and some of the countries south of the United States,

he says that in governments which profess absolute neutrality toward religion, the actual policy is one of hostility, and that such a policy is logically defensible on no theory except Atheism. Have atheists, in Dr. Ryan's opinion, no moral and no civil right to the maintenance of their views, and to their constitutional realization of them? Shall a Huxley [2] be muzzled? When the Constitution of the United States provided that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech . . . ," it adopted a policy of neutrality toward religions, and it guaranteed the moral and legal rights of every atheist in the country as truly as it guaranteed the rights of every Roman Catholic; [3] and the rights of Roman

[2] Huxley was not an atheist, but he was sufficiently remote from orthodoxy to serve the purpose of this reference to him.

[3] This seems to be the just inference from the language of the Federal Constitution. Jefferson states that the Legislature of Virginia refused to amend his proposed statute for religious freedom by making the references therein refer explicitly to the religion of Jesus Christ. The amendment, he says, "was rejected by a great majority, in proof that they meant to comprehend, within the mantle of its protection, the Jew and the Gentile, the Christian and Mahometan, the Hindoo, and infidel of every denomination." *The Writings of Thomas Jefferson,* vols. i, p. 62, ii, p. 237.

The liberal spirit of Virginia in 1776 and of her great Statesman brings out in strange contrast the early spirit of the Province of Maryland under Lord Baltimore, so often referred to by Roman Catholics as the paradise of religious liberty. By the Maryland Statute entitled "An Act concerning Religion" enacted 21st April, 1649, and approved by Lord Baltimore himself, it was provided that all persons within the Province who deny Jesus Christ to be the Son of God, or who deny the Holy Trinity, or speak reproachfully thereof, shall be punished with death and confiscation of all lands and goods. (*Archives of Maryland,* vol. 1, p. 244. *Cf.* Woodrow Wilson, *A History of the American People,* vol. i, pp. 130–131).

The laws of the thirteen original States were quite generally

Catholics and atheists alike can be maintained only by such guarantee of neutrality. It is against the principle of that guarantee that Dr. Ryan's whole exposition seems directed. This can be understood since the principle is axiomatically inconsistent with the philosophy, the claims, the constitution, and the history of the Roman Catholic Church. The guarantee is tolerated, according to Roman Catholic exposition, not as resting on objective truth and valid theory but on considerations of expediency, as we have seen in the preceding chapter.[4]

Dr. Ryan continues: "It is conceivable that a State might explicitly adopt the opinion that there is no God, and therefore prohibit divine worship as injurious to the public welfare." Under the American Constitution a man may believe there is no God, and proclaim it without prejudice to his political rights. The only prohibitions in modern States against divine and Christian worship that can be produced in evidence have been the prohibitions of Roman Catholic States forbidding Protestant worship as injurious to the public

tainted with that religious intolerance and that spirit of persecution which at the time were equally characteristic of Protestantism (excepting the Friends) and of Romanism. Early Virginia (*C. E.*, vol. xv, p. 457 a) was worse than early Maryland (*ibid.*, vol. ix, p. 757); Rhode Island (*ibid.*, vol. xiii, p. 22 d) better. As to Connecticut (*ibid.*, vol. iv, p. 254 d) and Massachusetts (*ibid.*, vol. x, p. 26 a) the less said the better. The Maryland Statute of 1649 is described in the *Catholic Encyclopedia* (vol. ix, p. 757 c) as "this celebrated Act of Toleration." It is indeed today a whimsical notion of toleration that would take the life and confiscate the goods of a man who does not believe in the Holy Trinity. And it would facilitate the diffusion of truth if the perennial reference by Roman Catholic controversialists to the "ideal" toleration of Lord Baltimore were relegated to the realm of imaginative history.

[4] *Supra* pp. 102, 110.

welfare.[5] The State which forbids every law respecting an establishment of religion, or prohibiting the free exercise thereof, and every law abridging the freedom of speech has, in effect, guaranteed the freedom of all religions, and the freedom of doubt to all skeptics. There can be no conflict with any religion except that one which asserts itself in the political order of the State as a sovereignty *de fide*.

Dr. Ryan says the State cannot avoid taking an attitude toward religion, and that "there can be no such actual policy as impartial indifference." But that is just the policy indicated in the constitutional guarantees.

31 Referring to the annual Thanksgiving Proclamation by the President and Governors, the employment of Chaplains in the legislatures and in the Army and Navy, the exemption of church property from taxation, Dr. Ryan says that these are in fact what Pope Leo calls "a public profession of religion." But the highest authority on the law of the State contests the validity of Dr. Ryan's conclusion.[6] Continuing, Dr. Ryan says:

[5] See Concordat arranged by Pope Pius IX with Queen Isabella of Spain confirming the exclusive privileges of the Roman Catholic religion in Spain, and giving the control of education to the Church. Also Ecuador (1862) and other South American countries. *Cf.* Dr. Rockwell in *E. B.*, vol. xx, p. 716 b. The proscription of public places for Protestant worship in Rome and in Madrid is within the experience of living men who have sought to worship in those cities.

[6] Dr. Ernst Freund, in his work on *The Police Power, Public Policy and Constitutional Rights,* p. 491, (*infra,* p. 203 note 11), referring to these instances of State recognition of religion, says: ". . . the state neither compels nor restrains, and its relation to religion may be described as purely moral; hence these practices are not regarded as objectionable on constitutional grounds."

"As compared with the degree of recognition accorded in a formal union of Church and State, they are, indeed, feeble and inconspicuous. Nevertheless, they do exemplify the principle. 'The public profession of religion,' is susceptible of very many forms and degrees, from the adoption, support, and toleration of only one creed, to the slight manifestations of recognition shown by countries which do not go even as far as the United States.

"It is not here contended that the latter kind of attitude is normal, or desirable in the abstract. The point," Dr. Ryan continues, "to be kept in mind is that the principle laid down by Pope Leo is not to be contrasted with the policy of separation of Church and State. His principle is directly and universally opposed only to a policy of specious neutrality, which in practice is always a policy of hostility."

The claim then is that religious freedom is not normal! The specious neutrality complained of seems to be enjoined in the Constitution of the United States! Apologetically Dr. Ryan says that:

"To assume that 'the public profession of religion' always calls for something radically different from the arrangement obtaining in the United States is to be guilty of confused thinking and to ignore important facts of experience."

A little later he quotes Pope Leo as saying that:

". . . it would be very erroneous to draw the conclu- 33
sion that in America is to be sought the type of the most desirable status of the (Roman) Church . . ."

Pope Leo seems to disagree with Dr. Ryan, and in

Pope Leo's view something different from the arrangement in the United States *is* wanted. What would be Dr. Ryan's answer to the question whether the arrangement in the United States is "normal" in objective truth or "desirable in the abstract"?

32 Referring to Pope Leo's statement that "the State must not only 'have care for religion,' but recognize the *true* religion," Dr. Ryan says that this "true religion" is the Roman Catholic religion. "It is a thoroughly logical position" he says. We agree with Dr. Ryan that it is—for Roman Catholics—but it is a thoroughly unlogical position for others.
We quote again:

"In the long run and with sufficient enlightenment, truth will be sufficiently mighty to prevail by its own force and momentum, but its victory can be greatly hastened by judicious assistance from the State . . ."

As the context shows that by "truth" Dr. Ryan means the "truth" of the Roman Catholic religion, his words clearly imply the moral necessity of State aid to the Roman Catholic Church. He supports his argument by citing (we should say quite inappositely)

"the successful opposition of the (Roman) Church to the Protestant Reformation in those countries where the (Roman) Church had the sympathy and assistance of the State . . ."

He next asserts:

". . . it is not impossible to know which religion is the right one, inasmuch as the Church of Christ" (the

Roman Catholic Church) "comes before men with credentials sufficient to convince all those who will deliberately examine the evidence with a will to believe."

In this statement Dr. Ryan simply reiterates the claims of the Pope, without attempting to reconcile them to the principles of religious liberty: "Such is the objective logic of the situation." No one would dispute 33
his conclusion. If the Roman Catholic religion is exclusively the religion of Christ, and the Church of Christ is solely the Roman Catholic Church, an attempt to reconcile Roman Catholic claims, in objective truth, to the principles of religious liberty in the modern State is hopeless.

The modern State has no objection to the claim of any religion that it is the only true religion so long as the church or religion in question is that of a private and voluntary society. When it demands recognition as a *de fide* sovereignty a definite objection must arise. There would be no objection in the modern State to the claim that there is but one God and that Mohammed is his prophet; but objection would be made to the application of that doctrine by a part of the electorate, acting in obedience *de fide* to a Mohammedan sovereignty outside the State.

Dr. Ryan next advances to the declaration that the principle of the recognition of the *true* religion, defended by Pope Leo, " . . . has complete and unconditional application only to (Roman) Catholic States." Now there is not and never has been a Roman Catholic State in the sense of unanimity of opinion. Dr. Ryan accepts and quotes Dr. Pohle's view that "there is good

37 reason to doubt if there still exists a purely (Roman)
Catholic State in the world." [7] We assume that by
33 "Catholic States" Dr. Ryan means predominantly Roman Catholic States. "Between these and the (Roman) Catholic Church," says Dr. Ryan, "the normal relation is that of formal agreement and mutual support; in other words, what is generally known as the union of Church and State." This explicit and emphatic statement would seem quite true from the language of the *Pastor Æternus*, the *Syllabus*, and the political writings of Pope Leo XIII, but it is nevertheless surprising to have it affirmed by that eminent scholar who, in the chair of Moral Theology at the Roman Catholic University of America, has exercised so profound an influence on the education of American youth. While there may not be a purely Roman Catholic State in the world, it is the avowed (and entirely conscientious) purpose of the Roman Church, as far as lies within its power, to make the State Roman Catholic. It is also the avowed purpose of the rest of the community to prevent such transformation, partly because the process might be very painful, and partly because its consummation might readily lead to modifications, in conformity with Roman Catholic doctrine, of the present constitutional guarantees of religious liberty. The modern State in which the Roman Catholic solidarity is a minority must regard the growth of that solidarity into a majority with apprehension. It knows, what we believe we have shown, that Roman Catholic doctrine is irreconcilable, in objective truth, with the principles of religious liberty as proclaimed in the modern State.

[7] *C. E.*, vol. xiv, p. 772 b.

The precise teaching of Pope Leo XIII in respect to American constitutional government is next taken up. As a pure question of politics and of temporal matters under a national sovereignty remote from the See of Rome, we should suppose the subject might be considered as immune from Papal supervision. But Dr. Ryan quotes from another Encyclical Letter of Pope Leo [8] addressed to the Roman Catholic Hierarchy of the United States, wherein, Dr. Ryan says, the Pope gave generous praise to the attitude of the government and laws of the United States toward religion, but, he says, the Pope immediately added:

"Yet, though all this is true, it would be very er- 33
roneous to draw the conclusion that in America is to be sought the type of the most desirable status of the (Roman) Church,[9] or that it would be universally lawful or expedient for State and Church to be, as in America, dissevered and divorced. The fact that (Roman) Catholicity with you is in good condition, nay, is even enjoying a prosperous growth, is by all means to be attributed to the fecundity with which God has endowed His (Roman Catholic) Church, in virtue of which unless men or circumstances interfere, she spontaneously expands and propagates herself; but she would bring forth more abundant fruits if, in addition to liberty, she enjoyed the favor of the laws and the patronage of [the] public authority."

Three observations concerning these words are called for: (a) They support the claim so often made, and so

[8] See Encyclical Letter *Longinque Oceani,* Catholicity in the United States; in *G. E. L.,* p. 323.

[9] See p. 121, *supra.*

often denied, that the See of Rome does interfere in matters of a purely political nature. The Pope's statement is a direct interference with the constitutional order of this country; the pontifical sovereignty of the See of Rome assumes to interfere in the affairs of the national sovereignty of the United States. Had an analogous statement been made by any sovereignty in the world, the Parliament of England, Mussolini, or the French Republic, it would have caused international complications. (b) The prosperity claimed for the Roman Catholic Church in the United States is attributed, not to the tolerant constitutional order of the latter but to the "fecundity" of that Church. (c) Dissatisfaction with the American constitutional order is plainly expressed, and a desire is implied that more than present constitutional privileges be extended to Roman Catholicism—even "*the favor of the laws and the patronage of* [*the*] *public authority*." These are deductions from supreme pontifical utterances and under the prerogative of the supremacy are binding on Roman Catholics.

Dr. Ryan then condemns conclusions against all union of Church and State; points out that the principle of union is not dependent on any particular form of union, and offers the following résumé of all that is essentially comprised in such union:

34 "The State should officially recognize the (Roman) Catholic religion as the religion of the commonwealth; accordingly it should invite the blessing and the ceremonial participation of the (Roman) Church for certain important public functions, as the opening of legislative sessions, the erection of public buildings,

etc., and delegate its officials to attend certain of the more important festival celebrations of the (Roman) Church; it should recognize and sanction the laws of the (Roman) Church; and it should protect the rights of the (Roman) Church, and the religious as well as the other rights of the (Roman) Church's members."

If this remarkable passage is to be regarded as expressing even a possible relation of the Roman Church, or any other religious society, to the State in this country, it is bold indeed. Dr. Ryan's "essentials" would constitute in fact an establishment of religion such as is expressly prohibited in the Federal Constitution.

He asks the question: "Does State recognition of the 35
(Roman) Catholic religion necessarily imply that no other religion should be tolerated?" He answers this question very frankly: "Much depends upon circumstances and much depends upon what is meant by toleration." His answer conflicts with the doctrine underlying American constitutional guarantees, which makes religious freedom independent of "circumstances" and superior to all "toleration." He points out that "neither unbaptized persons nor those born into a non-(Roman) Catholic sect, should ever be coerced into the (Roman) Catholic Church," but he asks, "should such persons be permitted to practice their own form of worship?" To this he answers: "If these are carried on within the family, or in such an inconspicuous manner as to be an occasion neither of scandal nor of perversion to the faithful, they may properly be tolerated by the State. At least, this is the approved (Roman) Catholic doctrine concerning the religious

rites of the non-baptized." We would ask Dr. Ryan whether the proscription of freedom of worship to non-(Roman) Catholics is not coercion? "The same principle," continues Dr. Ryan, "regarding freedom of worship seems fairly applicable to baptized persons who were born into a non-(Roman) Catholic sect for their participation in false worship does not necessarily imply a wilful affront to the true (Roman) Church nor a menace to public order or social welfare." He concludes:

"In a (Roman) Catholic State which protects and favors the (Roman) Catholic religion and whose citizens are in great majority adherents of the true faith, the religious performances of an insignificant and ostracized sect will constitute neither a scandal nor an occasion of perversion to (Roman) Catholics. Hence there exists no sufficient reason to justify the State in restricting the liberty of individuals."

In Dr. Ryan's Roman Catholic State it would be desirable that another religion should take heed not to grow beyond the limits of "an insignificant and ostracized sect" if it would preserve its privilege of worship. Such are the generous concessions which, in Dr. Ryan's opinion, might be granted by a Roman Catholic majority.

He passes next to the question of permitting the propagation by such sect of its "false" doctrine among Roman Catholics: "Against such an evil they (Roman
36 Catholics) have a right of protection by the (Roman) Catholic State." In other words, in a State where Roman Catholics form the majority of the electorate, the

moral and legal rights of the minorities to their religious propaganda ought, in objective truth, to be curtailed or denied if that propaganda shows signs of converting Roman Catholics.

"The fact," says Dr. Ryan, "that the individual may in good faith think that his false religion is true gives no more right to propagate it than the sincerity of the alien anarchist entitles him to advocate his abominable political theories in the United States. . . ." That is to say: the convictions of Roman Catholics that their religion is the only true religion may avail to exclude all other religions, but the conviction of a non-Roman Catholic must not be allowed any such effect against Roman Catholics. Here we have the antithesis between the modern State and the Roman Church clearly revealed. The State permits the propaganda of every religion. The Roman Church would feel morally obliged to prohibit by State law, if it could, the propaganda of other religious societies in its opinion endangering the religious welfare of Roman Catholics. The propositions as above laid down by Dr. Ryan, he says, ". . . are intolerant, but not therefore unreasonable. Error has not the same rights as truth. Since the pro- 36
fession and practice of error are contrary to human welfare, how can error have rights? How can the voluntary toleration of error be justified?" [10] Dr. Ryan

[10] When the Hon. Alfred E. Smith, in his magazine article already referred to, said (p. 728): "I believe in absolute freedom of conscience for all men and in equality of all churches, all sects, and all beliefs before the law as a matter of right and not as a matter of favor," he expressed a lofty and characteristically generous sentiment, but one that seems to be at variance with the belief of his Church as set forth by Pope Leo XIII and expounded by Dr. Ryan.

here asserts an ultimate and essential principle of his Church, which has always taught that any contradiction of its own affirmations in faith and morals is, in point of objective truth, error; that as such it cannot be entitled to legal rights; that if the State grants them, the State errs. It was a doctrine that grew out of the union of the State and the Latin Church in the Middle Ages, when the moral doctrine of the Church and the State were one. Heretics, being in error, had, in objective truth, no moral rights and hence no legal rights. This is the doctrine of the Roman Catholic Church today, though of course it has to be discountenanced in practice at present.

"... *how can error have rights? How can the voluntary toleration of error be justified?*" When Dr. Ryan says that error has not the same rights as truth he knows, and his readers ought to know, that he postulates the Roman Catholic religion as truth, and all other religions as error. The moment this is perceived his words become the very essence of intolerance. Yet one can attribute only the best intentions and highest motives to Dr. Ryan. He is one of those who believe that Christian truth can triumph by segregation from error; that Christian truth is necessary to the ultimate salvation of men, and that his Church is its sole depositary and dispenser. The modern State postulates none of these theories in its philosophy, and expresses none of them in its constitution. Its theory is that moral truth is ascertained only through conflict with error and ultimately perishes in its segregation from error.[11]

[11] "And though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do injuriously by licenc-

Inevitably, in such a *milieu*, Dr. Ryan must be driven to conclusions that conflict with the underlying principles of the present civic order.

We quote him again:

"If there is only one true religion, and if its pos- 37
session is the most important good in life for States as well as individuals, then the public profession, protection, and promotion of this religion and the legal prohibition of all direct assaults upon it, becomes one of the most obvious and fundamental duties of the State."

That is, in objective truth, the Roman Catholic religion is the only true religion, and it is also one of the most *obvious and fundamental duties* of the State to *profess, protect, and promote it.* Such being the animating desire and principle of the Roman Catholic Church it is necessarily thrown into antagonism with the modern State. Dr. Ryan then introduces the modification that the foregoing propositions have "full application" only to the completely Roman Catholic State; but this means they have partial application—all that circumstances permit—in States not completely Roman Catholic. He adopts the teaching of Dr. Pohle, quoting him as follows:

"When . . . several religions have firmly established 38
themselves and taken root in the same territory, noth-

ing and prohibiting to misdoubt her strength. Let her and Falsehood grapple; who ever knew Truth put to the worse, in a free and open encounter." John Milton, *Areopagitica,* p. 119.

"Error of opinion may be tolerated where reason is left free to combat it." Jefferson, *First Inaugural Address,* 1801. See *Writings of Thomas Jefferson,* vol. viii, p. 3.

ing else remains for the State than either to exercise tolerance towards them all, or, as conditions exist today, to make complete religious liberty for individuals and religious bodies a principle of government." [12]

It is clear that Dr. Pohle's rule is based on expediency, and is not framed in recognition of any moral right in religious bodies other than the Roman Catholic Church. Dr. Ryan goes on to say that the religious toleration thus granted is justified for two reasons: "First, rational expediency, inasmuch as the attempt to proscribe or hamper the peaceful activities of established religious groups would be productive of more harm than good; second, the positive provisions of religious liberty found in the constitutions of most modern States." That is, the Methodists and the Presbyterians may enjoy their religious activities in peace because the Roman Catholic Church finds that to proscribe or hamper them would do more harm than good, or because the Constitution at present *happens* to protect them; *i. e.*, under Dr. Ryan's doctrine, *churches other than the Roman Catholic Church find their protection in a chance provision of the American Constitution, and not in the eternal and inviolable recesses of objective truth.* Dr. Ryan further quotes Dr. Pohle to the effect that if religious freedom has been accepted and sworn to as a fundamental law in a constitution, the obligation to show this tolerance is binding on conscience, and cannot be disregarded even by Roman Catholic States "without violation of oaths and loyalty, and without violent internal convulsions." [13] That is

[12] *C. E.*, vol. xiv, p. 769 c.
[13] *Ibid.*, p. 772 a, b.

very true; as long as a constitution contains guarantees of religious liberty, Roman Catholics cannot violate them without violating their oaths of loyalty to such a constitution.

"But," [continues Dr. Ryan] "constitutions can be changed, and non-(Roman) Catholic sects may decline to such a point that the political proscription of them may become feasible and expedient. What protection would they then have against a (Roman) Catholic State? The latter could logically tolerate only such religious activities as were confined to the members of the dissenting group. It could not permit them to carry on general propaganda nor accord their organization certain privileges that had formerly been extended to all religious corporations, for example, exemption from taxation."

The only possible conclusion from these remarkable words is that the *de fide* belief of Roman Catholics, in objective truth, nullifies the moral rights of non-Roman Catholics, and that a Roman Catholic majority in the modern State is under no moral obligation to recognize those moral rights as legal rights, although it may do so by favor or out of expediency.

The views expressed in the paragraph last quoted are, says Dr. Ryan, very true in logic and in theory, but their practical realization in any State is so remote that no "practical man" will let it disturb his equanimity, though "zealots and bigots" will continue to 39
attack the Roman Church. But there are many (they may not be practical and they may be zealots and bigots) who believe that invalid theory and erro-

neous doctrine should not pass unrebuked because injurious results are not certain or immediate. Such theory and doctrine in themselves call for protest and justify action. In the American State not only the retention of our present constitutional guarantees of religious liberty is demanded, but also the renunciation of the claim to and theory of sovereignty in every religious society and institution under the sinister influence of which those guarantees may be changed.

Dr. Ryan appeals to his fellow citizens to be sufficiently honorable to respect Roman Catholic devotion to truth. We trust we have said enough to express our profound respect for that devotion. Whether that devotion is directed to truth or to that which is erroneously, though sincerely, believed to be truth, is the issue, and not the sincerity or good faith of either party to the great controversy.

Dr. Ryan comments: "Emphatically, then, the (Roman) Church is 'not inferior to the civil power.'" He refers to the Hegelian conception of the omnipotent State and the Austinian theory of State sovereignty. He holds that State sovereignty has been expanded so as to include moral implications. He asks: "Is a
40 sovereign State independent, not merely of other States, but of the moral law and the ordinances of religion? May a State reasonably do anything that it has the constitutional authority to do, regardless of the claims of individuals or societies?" The answer, he says, of most political theorists has been that "the sovereignty of the State is not only legally but morally unlimited."

There are many who would agree with Dr. Ryan in a protest against unlimited power over the moral

life of men in State government, but we know of no such power in any constitutional government. Such power is not found today in the government of any modern State, but it is found in the Civic Primacy of the People. The *power* of such Civic Primacy cannot be disputed, and its *authority* can be disputed only by the individual conscience free from every obedience to an authority alien to the State. We know that in all Dr. Ryan's argument he postulates the Roman Catholic religion and its moral law as, in objective truth, the only true religion and the only true moral law. When, therefore, he asks whether the State is to be independent of the moral law and the ordinances of religion we answer: Yes, a thousand times yes! Civic moral life can reasonably be based on the moral determination of all the people in virtue of their civic primacy. It cannot reasonably be based on the moral determination of a part of the people organized in the Roman Catholic Church, and yielding compulsory obedience to the Pope in all matters belonging to morals. The attempt to base it there, aye, even the claim that, in objective truth, it should be based there, is destructive of the civic peace and the political order of the modern State.

If Roman Catholics fear to make the State the supreme judge in questions of morals and conscience, do non-Roman Catholics fear any the less to make the Roman Catholic Church such supreme judge in lieu of the State? If the State is not the supreme judge, the claims of the Roman Catholic Church or any other society, be it the Socialist Party or the Ku Klux Klan, could be asserted without restraint. No one, we should suppose, would object more strenuously than Dr. Ryan

to the assertion of the right of the Ku Klux Klan to demonstrations that violate State ordinances, but unless the State, under the Constitution, is supreme it must stand powerless before the claims of right of that society or any other society, especially one that knows that it is right and regards its self-conceived divine and sovereign status as superior in certain points to the authority of the State. But we agree with Dr. Ryan that the answer of the political theorists he alludes to is wrong: the State is neither legally nor morally unlimited. The government is bound effectually by the constitution. The people of the State are bound by their consciences and by their free moral sense, freely exercised under normal and constitutional conditions. Lincoln was right when he said: "A majority held in restraint by constitutional checks and limitations, and always changing easily with deliberate changes of popular opinions and sentiments, is the only true sovereign of a free people." [14] When that majority is obstructed in its constitutional function by a solidarity of citizens, the free exercise of whose moral consciousness and individual consciences is, or may be, paralyzed by the obedience owed *de fide* to a church sovereignty, an abnormal and unconstitutional situation is developed.

State omnipotence in government is odious, but there is no such omnipotence in government. It has given way to government by the consent of the governed, under the limitations of a constitution. That is not true of omnipotence in the Roman Church. The Hegelian omnipotent State government disappeared on Armistice Day,

[14] Raymond, *History of the Administration of President Lincoln*, p. 117.

but a potentially omnipotent Church government remains.

Dr. Ryan urges as two objections against the Austinian State: (a) that the Roman Church would become " . . . merely one of several private associations existing within and subordinate to the State"; (b) that the Roman Church would have " . . . no coördinate and independent authority, nor any province that is exclusively its own." We would not endorse the Austinian State, but we would point out that the reduction of the Roman Church to one of many private associations, and its deprivation of coördinate and independent authority, were among the ends secured through the guarantees of religious liberty in the Constitution of the United States. Dr. Ryan urges that under the Austinian theory " . . . the State is regarded as the highest expression of social life, coextensive and all but identical with human society itself."

The modern State, we maintain, is such expression of social life, because of that very identity with human society to which Dr. Ryan alludes; but the modern State is not Austinian. It is limited by a constitution on the one side and, on the other, under normal conditions, by the free conscience and free moral consciousness of the citizen.

Dr. Ryan continues:

"It (the Austinian State) usurps the place in society formerly held by the (Roman) Church. It makes itself the spiritual and moral, as well as the temporal and civil head of society, the final determinant of social right and social wrong, social justice and social in-

justice. This is far more than a reversal of the doctrine set down by Pope Leo."

As we have said above, the modern State is not Austinian, but, nevertheless, it is by its constitution and in its constituency, final determinant (just as Dr. Ryan says) of right and wrong for all purposes of civic morality, and for all ends of the political and social order.

There is an amazing paradox in the claims of Pope Leo, so vigorously defended by Dr. Ryan, that in the modern State of many men of many minds the Roman Catholic Church should be, in objective truth, the final determinant of morals. The people of the State in virtue of their civic primacy have excluded the Roman Catholic Church as such determinant, and acting under the constitution have reserved such position for themselves. To this assumption by the people of the place in the State formerly held by the Roman Catholic Church, Dr. Ryan applies the word "usurps." There is only one reply, and it is of historic form: If *this* be usurpation, make the most of it!

If it be an omnipotent majority that Dr. Ryan objects to, we do not see how he can reasonably protest, for he has defended the right, in objective truth, of a Roman Catholic majority to deprive sectarian minorities of the right of public worship [15] and even of the freedom of taxation.[16]

In an interesting passage Dr. Ryan refers to the theories of Dr. Laski in reference to the sovereignty

[15] *Supra,* pp. 127–129.
[16] *Supra,* p. 133.

of the State, but he declines to accept Dr. Laski's conclusions. "We do not accept that moral anarchism which would permit any social group at any time to withhold its allegiance and fix the limits of sovereignty." However unpleasant, sincerity in argument compels a reference to the fact that this right to withhold allegiance and fix the limits of State sovereignty is, we should say, precisely the right claimed by the Roman Catholic Church in virtue of its sovereignty. It is, unhappily, the right claimed by revolutionary societies throughout the world. But its assertion by the Roman Church in right of sovereignty involves a violation of the constitutional order of the modern State that is not involved in its assertion by a private and voluntary association. The significant point is that in the Roman Catholic Church allegiance may be withheld and the limits of State sovereignty fixed, *not in the exercise of the free consciousness of the social group composed of its members but by the determination of a sovereign Pope in virtue of their compulsory religious obedience to him.* The modern State, in view of its constitution, cannot, without self-nullification, accept the determination by such putative sovereignty in lieu of the free determination required of all its citizens.

Dr. Ryan summarizes:

"The case stands thus: While the authority of the 43
State is supreme in civil affairs, it is not in every respect unlimited. It must be exercised in conformity with the moral law. Whether a particular act of the State is contrary to the moral law, is a question which obviously must be decided by some other authority or tribunal than the State itself, since the State has no

competence in the field of morals. The solution will be sought by one man from his conscience alone, by another from the (Roman) Church. In neither case is it proper to say that the supremacy of the State is denied."

Dr. Ryan's assertion here that the State has no competence in the field of morals will occasion much dissent, for surely in its modern conception it has a competence in the field of morals in exact proportion to the moral development of the citizens who constitute it. The constitution of the modern State requires that its competence in morals should be found in the free consciousness and conscience of its citizens, and not in the decrees of a religious sovereignty over any part of them. Dr. Ryan in his argument, by denying all competence to the State in the field of morals, would open the way to some tribunal of morals other than the People. This, in his theory and philosophy, must be none other than the Roman Catholic Church. But such a tribunal is obviously impossible in view of the fundamental principles of the modern State, whose sovereignty is immediately challenged by the action of an independent religious sovereignty commanding a part of its citizens in virtue of a compulsory religious obedience. No such challenge to State sovereignty exists in the recourse of citizens to their individual consciences or to sources of advice and information voluntarily made use of.

44 Some pages are given by Dr. Ryan to the action of Popes in the excommunication of rulers and the exercise of their deposing power in the Middle Ages. But with the disappearance of the medieval system, the rise

of the modern State, and the separation of Church and State, the right of excommunication has lost its direct political importance.

That cannot be said of the claim of right in the Roman Catholic Church to determine for its people, and to declare "when a State ordinance is out of har- 47
mony with the ordinances of religion and morality" of the Roman Catholic Church. In connection with this claim Dr. Ryan considers the right of the Roman Catholic Church to dispense its people from their oaths of allegiance. He defends the principle that " . . . the
(Roman) Catholic Church, as the guardian and au- 46
thoritative interpreter of the moral law, has as much right to pronounce upon the morality of political actions and relations as upon the morality of the actions and relations of private societies and individuals." Any voluntary society has the right to pronounce upon the morality of political actions and relations. But the question Dr. Ryan is considering is that of the right of a religious sovereignty quite apart from the State to determine moral issues for the solidarity of its members in the State, and to command their obedience in matters which necessarily affect the interests of the State. The modern State would not, and could not, regard with disfavor the action of Harvard University, the Reform Club, or the International Peace Society, disseminating views against the moral justification of its laws, but it could not so regard the action of an association made up of citizens owing allegiance to another sovereignty, and under compulsory obedience thereto in matters belonging to morals.

Dr. Ryan quotes Dr. Laski as denying " . . . the

validity of any sovereign power save that of right." [17] He then says:

"And 'the discovery of right,' which Professor Laski declares to be the duty of the individual members of the State, is for the (Roman) Catholic citizen achieved in the authoritative decisions of the (Roman) Church. That is the whole of the situation, considered practically."

What the modern State protests is this very substitution of the "authoritative decisions" of the coercive religious sovereignty of the Supreme Pontiff of the Roman Church for the free conception by the individual citizen of what is right.

Dr. Ryan continues:

"The (Roman) Church has no authority, direct, indirect, or of any other sort or description, over the acts of the State, so long as these are not in conflict with (Roman Catholic) religion or morality."

But, as we have seen and shall yet see in subsequent pages, a large part of State activity involves matters belonging to morals, in which conflict with the Roman Church necessarily arises.

In matters involving the joint jurisdiction of the Roman Church and the State, Dr. Ryan says that controversy is provoked largely by marriage and education. We defer the consideration of these subjects to later chapters.[18]

Dr. Ryan treats of the matter of censorship and

[17] See Laski, *Authority*, p. 122.

[18] See chapters XII and XIV.

freedom of speech and writing. "Pope Leo," he says, 55
"explicitly rejects the doctrine of unlimited freedom of expression." So we reply does the State. The question is who shall determine the limitation: the *free* moral sense of the community or the Pope?

Dr. Ryan recognizes that there is a difficulty in 56
" . . . distinguishing between truth and error, or between a socially beneficial and a socially harmful doctrine. . . ." Because of the difficulty, he claims we should accept the determination of the Roman Catholic Church. "Here," he says, "we shall merely repeat that all men of good will can find and recognize the true (Roman Catholic) religion, and that when it is recognized and adopted by the vast majority of the citizens, the State ought to protect them by all legitimate means against the advocacy of false religious notions." If Dr. Ryan is correct, then in a modern State which develops a predominantly Roman Catholic population the constitutional guarantees of religious liberty would be annulled in favor of Roman Catholicism.

The closing comment of Dr. Ryan is:

"In a genuinely (Roman) Catholic State, public 60
authority should not permit the introduction of new forms of religion; but when several denominations have already been established, the State may, and generally should, permit them all to exist and to function. The reason is that the attempt to suppress them would on the whole be injurious to the commonwealth."

One is reminded of Dr. Laski's definition of an historical type of political toleration: " . . . a concession rendered by the state to some group of its subjects whose

destruction would be less profitable than the exertion might warrant." [19] But that is hardly the theory of tolerance on which the modern State has based its constitutional guarantees of religious liberty.

Fundamental in the great subject to which Dr. Ryan has addressed himself is the question of the legitimate determination of truth and error, virtue and vice, and the promotion of truth and virtue in the social and political life of man.

Among the reflections in his treatise we note the following:

57 "When the State adopts a policy of permitting the advocacy of socially injurious error, it neglects its duty to the numerous generations that come and go in the long interval before error is 'ultimately' vanquished."

But we would ask: because the State may develop socially injurious error in moral standards and conduct, are men to abandon it as the refuge they deliberately chose from the socially injurious error and immoral standards of conduct in the Latin Church? To do so would be to act in defiance of human experience and the events of history. A reference seems apposite to events wherein the State, the Civic Primacy of Peoples, representing the moral consciousness of an outraged humanity, has purged the recreant Church of a paralyzing corruption and coerced it to the path of moral rectitude. If Popes like Gregory VII and Innocent III inspired the life of men with moral energy, and coerced lustful and perfidious monarchs to the path of right-

[19] *Foundations*, p. 16.

eousness and duty, Emperors like Otto I and Henry III drove recreant Popes from the throne which they defiled, and compelled a Church that had sunk below the communal standard of moral life to some observance of the righteousness it presumed to administer in the world.

In the pontificates of Pope John XII,[20] of Benedict IX and Gregory VI;[21] in those of the Borgia[22] and the Medici,[23] there was no State check on the exercise of the moral jurisdiction of the Church, but the Apostolic See became the plaything of profligate women and the throne of dissolute boys. It was sold like a piece of merchandise. The Papal palaces themselves were polluted with the violation of the sacredness of marriage, gross licentiousness, pornographic art and literature, insensate profligacy, cruel lust, satanic ambition, rapacious venality. The Renaissance pontificates recorded the lowest depth of the prostitution of the Petrine Primacy in the Church to the profligacy and rapacity of political power. Where, it may be asked, would the Papacy have dragged the moral life of Europe if, in the tenth and eleventh centuries, the Emperors had not asserted the moral dominion of the State in the deposition of profligate Popes and the enthronement of worthy representatives in their place? and if, in the sixteenth century, an outraged public

[20] *C. E.*, vol. viii, p. 426; Bryce, pp. 86, 133; Janus, p. 100.

[21] *C. E.*, vol. ii, p. 429 a; Bryce, p. 151; Janus, p. 100.

[22] *C. E.*, vol. i, pp. 289–294; *E. B.*, vol. i, pp. 553–555.

[23] *C. E.*, vol. ix, p. 162; vol. iv, pp. 24 d–25, 27 a; Dr. Carlton J. H. Hayes in *E. B.*, vol. xvi, p. 433; G. F. Young, *The Medici*, vol. i, pp. 403–426, 436–455. For the history of the Medici Popes see H. M. Vaughan, *The Medici Popes*.

sentiment had not driven the Church of Rome and the Papacy to the saving grace of the Council of Trent and the counter-Reformation? These were occasions in European history when, to quote Lord Bryce, ". . . though Rome herself might be lost to decency, Western Christendom was roused to anger." [24]

The last and most impressive instance loses none of its value in political thought because the madman of Wittenburg, like the Popes he assailed, dispensed sin [25] and sanctified force,[26] nor because German princes were inspired by motives as rapacious and sordid as those of the Popes they combatted. These were but trifles in the stupendous assertion by an outraged secular world of the moral sovereignty of public opinion against the corruption and degradation which had overtaken the putative Vicars of Christ.

Is it to an institution so subject to moral delinquency that the moral life of man should be committed by the modern State? Any argument based upon the high character of recent pontificates is not convincing. In the Middle Ages a succession of noble Popes, enthroned and maintained largely by the efforts of the Emperors, checked the infamy of their predecessors, but that did not prevent its recurrence in their successors. Political institutions cannot safely be based on supernatural assumptions of divinity that are rejected by the larger

[24] Bryce, p. 86.

[25] P. Smith, *The Age of the Reformation,* p. 119; H. Grisar, *Luther,* vol. iv, pp. 13–79.

[26] *The Cambridge Modern History,* vol. ii, p. 193; P. Schreckenbach, *Luther und der Bauernkrieg,* pp. 44–45 and note 1; *cf. C. E.,* vol. ix, p. 450 b.

part of mankind, nor founded on instances of human virtue that are never constant.

It is one of the interesting observations of Count De Maistre that " . . . the authority of the Popes was the power chosen and constituted in the middle ages for balancing temporal sovereignty and rendering it supportable to mankind." [27] He forgot that the power chosen and constituted, not only in the Middle Ages but in all time, for restraining ecclesiastical claims and rendering them supportable to mankind, is the authority of the State derived from the Civic Primacy of Peoples.[28]

[27] *The Pope,* p. 179.

[28] In this chapter and in chapter VI attention has been confined to Pope Leo's words advocating the profession of the Roman Catholic religion as the bounden duty of the State, and the union of that Church and the State as the ideal relation. If further pontifical authority is desired, it may be found in the Encyclical Letter *Pascendi Dominici Gregis* (on Modernism), issued by Pope Pius X, 8th September, 1907, and printed in *The Programme of Modernism: A Reply to the Encyclical of Pius X;* translated from the Italian by Rev. Father George Tyrrell, with an Introduction by A. Leslie Lilley. Reference may also be had to the Rev. Charles Hillman Fountain's article, "The Case for the Opposition to a Catholic President," *Current History,* March, 1928, pp. 767–778.

CHAPTER VIII

DEMOCRACY IN THE LAW AND GOVERNMENT OF THE CHURCH OF ROME

The religious devotee may find in supernatural claims and Divine Revelation an imaginary support for the imposing fabric of Papal sovereignty, but these will not meet the demands of the student of political science and of history. He will look to his own departments of thought for the explanation of the retrogressive and monarchical development of government in the Roman Church side by side with the progressive and popular development in the State. If the former is found to be the result of the arbitrary action of the human will directed to the ends of political power, its character as Divine in the moral life of man will be put in question. It is necessary, therefore, to examine briefly the nature of certain constitutional changes in the Roman Church, in which it has met the democratic movement in society at large with a fiercer assertion of monarchical absolutism, and the substitution within its government of the will of one as law for the synthesis of the free wills of the governed.

The primitive Latin Church of the early centuries has been described as a self-governing unity, combining in wonderful equipoise an imperial centralization with local home rule.[1] The great early society of Chris-

[1] Wirgman, pp. 75, 96, citing Ramsay, *S. Paul the Traveller,* p. 125.

tians subdivided into churches, each about its episcopal center, and the bishops combined in the synods and the provinces and the archiepiscopates about the several patriarchs, functioned in a balanced and divided authority which made supremacy impossible and established a jurisdictional order congenial to the spirit of freedom.[2]

This original and democratic organization has gradually disappeared before Papal aggression. We would refer to a few instances in the long process, selecting those concerning which there is but little, if any, dispute.

Roman Catholic authority concedes that, "until the sixth century, the clergy and the people elected the bishop on condition that the election should be approved by the neighbouring bishops," [3] and non-Roman authority of the highest character claims that such elections were the normal method of episcopal elevation until 1075.[4] But since that time, episcopal elections as a matter of right have not been known in the Church of Rome. A continuous expansion of Papal power has gone on, the successive steps of which need not be traced here. We are concerned only with the present consummation: " . . . the choice of bishops belongs exclusively to the pope." [5]

[2] *Cf.* Davis, *Corporations,* vol. i, p. 39.

[3] *C. E.,* vol. ii, p. 583 c.

[4] Mr. Carlyle, vol. iv, pp. 25–26, fixes this as the date up to which " . . . in theory at least it would have been recognised that the election of the clergy and people, the consent of the comprovincial bishops and the metropolitan, and the approval of the prince, were all normally elements in the legitimate appointment of a bishop."

[5] *C. E.,* vol. ii, p. 584 b; Woywod, vol. i, pp. 117–118 (Canon 329).

"Whatever the manner of his nomination, the bishop possesses no power until his nomination has been confirmed by the Holy See . . . The right of consecrating a bishop belongs to the sovereign pontiff . . ." [6]

"It is a controverted question whether the bishops hold their jurisdiction directly from God or from the sovereign pontiff. The latter opinion, however, is almost generally admitted at the present day, for it is more in conformity with the monarchical constitution of the (Roman) Church, which seems to demand that there should be no power in the (Roman) Church not emanating immediately from the sovereign pontiff." [7]

The bishop, " . . . has no power against the will of a superior authority, *i. e.* the pope, the councils, whether general, plenary, or provincial." [8]

"It is of Catholic faith that bishops are of Divine institution. In the hierarchy of order they possess powers superior to those of priests and deacons; in the hierarchy of jurisdiction, by Christ's will, they are appointed for the government of one portion of the faithful of the Church, under the direction and authority of the sovereign pontiff, who can determine and restrain their powers, but not annihilate them." [9]

"As the supreme governor of the Church the pope

[6] *C. E.*, vol. ii, p. 585 b.

[7] *Ibid.*, p. 586 a.

[8] *Ibid.*, p. 585 d.

As the Councils have no power against the will of the Pope (*infra* p. 173) the reference to them seems superfluous.

[9] *C. E.*, vol. ii, p. 581 b. Determination without annihilation would seem to be quite impossible. The office of bishop is obviously one of dignity and of great sacredness, but while "rights" and "authority" are commonly ascribed to it such are formal and not real, being wholly subject to the authority of the Pope.

has authority over all appointments to its public offices. Thus (a) it is his to nominate to bishoprics, or, where the nomination has been conceded to others, to give confirmation. Further, he alone can translate bishops from one see to another, can accept their resignation, and can, where grave cause exists, sentence to deprivation. (b) He can establish dioceses, and can annul a previously existing arrangement in favour of a new one." [10]

The power of the Pope to create dioceses enables him to increase the number of bishops and, by such increase, if he is so disposed, to control Councils.[11] Indeed the creation of dioceses is not necessary. Imaginary or fictitious dioceses are ready to hand, and "titular" bishops can always be appointed, *i. e.*, bishops who have no territorial dioceses and no jurisdiction. They bear the titles of dioceses long extinct, *e. g.*, Bishop of Nicæa, Bishop of Tyre, Archbishop of Dioclea.[12] The creation of these titular bishops by the Pope, and their right to participate in the government of the Church, have at times been the object of criticism. According to a democratic principle the power of office should go hand in hand with responsibility to the governed. This principle is distinctly violated by the creation of bishops without flocks, and hence without responsibility except to the absolutism creating them. Lord Acton referred

[10] *C. E.*, vol. xii, p. 269 c.

[11] Pope John XXIII appointed fifty bishops to control vote in the Council of Constance. Creighton, *History of the Papacy*, vol. i, p. 317.

[12] The Archbishop of Dioclea is Monsignor P. Fumasoni-Biondi, now Papal Delegate at Washington, D. C. Dioclea was a town of Phrygia in Asia Minor. It was, prior to the twelfth or thirteenth century, a bishopric in Phrygia Pacatiana. *C. E.*, vol. v, p. 7 a.

in contemptuous terms to their presence at the Vatican Council of 1870.[13]

It thus becomes clear that in the course of centuries the early pastorate of the Bishop of Rome has been converted by the genius of the Latin race into an absolute monarchy, centering in the Pope and reaching out over all the world in a vast chain of local episcopal representatives owing appointment to the Pope, dependent on the Pope for continued existence, and responsible to no one but the Pope. True to the institutional life of the ancient Roman Empire to which the early development of Latin Christianity belonged, the latter has duplicated the Roman Emperor in the Pope, and repeated the vast dependent and subservient provincial system of the Empire in the diocesan system of the Roman Church. Passages from the pen of the historian Gibbon relating to the development of the provincial system of Imperial Rome can be applied almost word for word to the development of the diocesan system of Papal Rome.[14] And Lord Bryce,

[13] "It is obvious that, if the office of the bishops in Council is to bear testimony to the faith of their respective flocks and to the tradition of their several churches, the numerous bishops made out of Roman Monsignori, who have no jurisdiction and no flock, are a foreign as well as an arbitrary element in the Council." *Correspondence,* vol. i, p. 107.

[14] "The provinces of the empire . . . were destitute of any public force or constitutional freedom. In Etruria, in Greece, and in Gaul, it was the first care of the senate to dissolve those dangerous confederacies which taught mankind that, as the Roman arms prevailed by division, they might be resisted by union. Those princes, whom the ostentation of gratitude or generosity permitted for awhile to hold a precarious sceptre, were dismissed from their thrones as soon as they had performed their appointed task of fashioning to the yoke the vanquished nations. The free states and cities which had embraced the cause of Rome were rewarded with a nominal alliance,

describing the institutional development of Latin Christianity at the time of the fall of the ancient Empire, notes the similitude between the Roman Church and the ancient State whose throne upon the Seven Hills it occupied.[15] The Imperial development went on and, referring to the situation at the beginning of the fourteenth century, Dr. Luchaire writes:

"By its exaggerated methods of centralization the papal monarchy had absorbed within itself all the living forces of the religious world and suppressed all the liberties in which the Church of old had lived. The subjection of the secular clergy was complete, while the episcopate retained no shadow of its independence." [16]

We would ask: Whence comes the right of the occupant of the Papal chair to sit in Peter's place and

and insensibly sunk into real servitude. The public authority was everywhere exercised by the ministers of the senate and of the emperors, and that authority was absolute and without control." E. Gibbon, *The History of the Decline and Fall of the Roman Empire,* vol. 1, pp. 259, 300–303; *cf.* also vol. ii, p. 272.

[15] "In A. D. 476 Rome ceased to be the political capital of the Western countries, and the Papacy, inheriting no small part of the local authority which had belonged to the Emperor's officers, drew to herself the reverence which the name of the city still commanded, until, in the days which followed her emancipation from the control of the Emperors at Constantinople, she had perfected in theory a scheme which made her the exact counterpart of the departed despotism, the centre of the hierarchy, absolute mistress of the Christian world." (Bryce, p. 100). "Broadly speaking, the Roman Catholic Church performed for Europe the inestimable service of preserving the organic framework of decaying Roman institutions during the shock of the barbarian conquests until it might again serve as the framework of society after its reorganization. As a part of the service the Church built up within itself a form of government and a body of law modelled on those of Rome." (Davis, *Corporations,* vol. ii, p. 236).

[16] *E. B.,* vol. xx, p. 700 a.

to command this universal monarchy that has thus been built up?

The claim is clearly made in the Constitution *Pastor Æternus*,[17] that a Primacy of Jurisdiction over the universal Church of God was given by Jesus Christ to the Apostle Peter. The Apostle became the first Bishop of the Diocese of Rome, holding, it will be noted, the Bishopric in virtue of his choice by the Christians at Rome, as well as the Primacy by the gift of Jesus Christ. A question has existed as to whether St. Peter by his own act attached the personal Primacy to the Bishopric, to be held in perpetuity by the succeeding bishops; or whether the Apostles knew by Revelation and taught to the early Church a Divine law decreeing the succession of the Bishop of Rome to the Primacy. The latter view is the one most generally held. The significant point is that there are two offices, the Primacy and the Bishopric, united in one person—the Pope.[18] These are the supernatural claims of the origin of the Papal power which are denied by a large part of Christendom. We quote from the *Catholic Encyclopedia:*

"The supreme headship of the Church is . . . annexed to the office of Roman bishop. The pope becomes chief pastor because he is Bishop of Rome: he does not become Bishop of Rome because he has been chosen to be head of the universal Church. Thus, an election to the papacy is, properly speaking, primarily an election to the local bishopric. The right

[17] Appendix I, p. 281; *cf.* chapter IV, *supra* pp. 58–59; Woywod, vol. i, pp. 85–86 (Canons 218–221).

[18] *C. E.*, vol. xii, p. 265 a, b.

to elect their bishop has ever belonged to the members of the Roman Church.[19] They possess the prerogative of giving to the universal Church her chief pastor; they do not receive their bishop in virtue of his election by the universal Church." [20]

Thus the right to create the supreme sovereign over the entire Christian world originally resided, in Roman theory, with the members of the Diocese of Rome, and for over a thousand years the office of electing the Popes was exercised by the clergy and the people of that Diocese.[21]

In 1059 Pope Nicholas II promulgated his famous decree removing the election of the Popes entirely from the people and from the clergy and vesting it in a small group of the clergy selected by the Pope, rectors of important churches in Rome and the vicinage. These were called Cardinals.[22] With the exception of the few clergy who, by the creation of the Pope, became Cardinals, neither the clergy nor the laity retained any right in the election of the Pope except, as it is explicitly stated, the somewhat dubious "right of acclaiming" the Cardinals' choice.[23]

Two questions arise: on what theory and by what

[19] The reference is to the original right before it was superseded by Papal decrees. By the term "Roman Church" as here used is obviously meant the Diocese of Rome or the Church in Rome, not the universal Roman Church.

[20] *C. E.*, vol. xii, p. 270 c.

[21] *C. E.*, vol. xi, p. 55 c.

[22] Carlyle, vol. iv, p. 24; *C. E.*, vol. xi, p. 55 c. The word "Cardinal" is derived from the Latin root *cardo*—a hinge. Cardinal Churches were, in the beginning, simply important churches. *C. E.*, vol. iii, p. 333 c.

[23] *Ibid.*, vol. xi, p. 55 d.

authority was the right or privilege of election taken from the clergy and people of the diocese? and by what right were Cardinals created?

The right or privilege of election, we are told, was taken from the clergy at large and from the people upon the theory that " . . . it is always for the hierarchy to guide the decisions of the flock";[24] but the hierarchy is wholly subject to the Pope. The right of election, therefore, was taken from the clergy at large and from the people by the will and fiat of the Pope, and vested in the Cardinals.[25] The Popes were to create Cardinals and the Cardinals were to elect the Popes.[26] The right of appointment of the Cardinals by the Pope obviously puts the control of the College in his hands. Pope Leo X on one occasion appointed thirty-one Cardinals to the College, thereby effecting its compliance with his policy.[27] The Cardinals were, and are, entirely a Papal creation without authorization or analogy in Scripture. The consultative and electoral College which from this time on the Cardinals constituted is equally a Papal creation.[28] The decree of

[24] *C. E.*, vol. xii, p. 270 d; Woywod, vol. i, pp. 87–88 (Canons 230–231).

[25] "Should the college of cardinals ever become extinct, the duty of choosing a supreme pastor would fall, not on the bishops assembled in council, but upon the remaining Roman clergy," (*C. E.*, vol. xii, p. 270 c, d) *i. e.* the clergy belonging to the Diocese of Rome. The people seem to have dropped out of their ancient rights entirely.

[26] The election of the Pope is now affected in some details by later decrees, notably by the Constitution of Pope Pius X, *Vacante Sede Apostolica,* December 25, 1904. See Woywod, vol. i, p. 63 and note 8. The essentials in the premises are unchanged.

[27] Vaughan, *The Medici Popes,* p. 255.

[28] The Cardinals may elect as Pope any cleric or layman, his ordination and consecration, one or both, following the election. Since 1378 a Cardinal has always been elected. (*C. E.*, vol. iv, p. 194 a).

Nicholas II, therefore, establishing this electoral oligarchy in the Roman Church, has no support or authorization, except such as may be found in supernatural sources and in an alleged Divine Revelation, with which the argument here is not concerned. It took away from the Roman Church every essential element of representative government, demonstrating that the principle of government by the consent of the governed has no place in the constitution of that Church. With the rise of modern democracies the Roman Church has come to admit, under certain conditions, the validity of such principles in secular government, but it denies such validity in ecclesiastical government. Thus that Church is today as monarchical as in the time of Innocent III. It teaches that the State and the Roman Church are both of Divine order and origin, leaving, however, the question unsolved why a form of government claiming Divine ordination in the Church should have proven so impossible in the State that it has had to be constitutionally limited. There is one democratic feature remaining: any cleric or layman may be elected Pope; but this much vaunted feature makes the government of the Roman Church no more democratic than the chance of every Roman citizen to become Emperor made a democracy of the Roman Empire.

History discloses a long record of the claims of the Emperors to supervise, confirm, and even to control Papal elections, and a still longer record of the claims of the secular State of the right to interfere in the appointment of bishops. To grant that such claims are

An Italian prelate has been quite generally the choice for several centuries.

quite indefensible does not in any way justify Papal absolutism as the alternative. Indeed the view has often been advanced, and history amply supports it, that the intervention of the secular State in the affairs of the Latin Church was occasioned either by the moral corruption of the Papal government within the Church, instances of which have been referred to,[29] or by its external encroachments upon the supremacy of the State. The Emperors intervened not only to assert the moral sovereignty of the State against the corruption of the Church, but also to maintain the sovereignty of the State against the political and civic usurpations of the Church. The latter, had they been left unchecked, would have subjected the entire Western world to the same submission to the See of Rome which has come to pass in the Latin Church.

The changes in the government of the Church as they have proceeded have been attended by changes in the status of the laity harmonizing therewith. The share of the clergy in the spiritual jurisdiction and government of the Church having been reduced to a

[29] See chap. VII, pp. 144–147.

Criticizing the political doctrines of Aquinas in the medieval Church Dr. Emerton states (p. 7): "If they could ever be realised the result would be a monstrous theocracy within which every independent activity, whether of the individual or of organized society must shrivel and perish. That they had not been realised up to the time of Aquinas had been largely due to the unflagging energy of those representatives of the imperial power, men like Otto the Great, Henry IV, Frederic Barbarossa, and Frederick II, who had made themselves the champions of all national interests in their long struggle for recognition. The abandonment of this championship by Rudolf of Habsburg threw the responsibility for maintaining the rights of civil government upon the several national kingdoms."

mere form, the share of the laity wholly disappeared. A principle supporting this change was developed:

"The principle is that the laity as such have no share in the spiritual jurisdiction and government of the Church; . . . The laity are incapable, if not by Divine law at least by canon law, of real jurisdiction in the Church . . . it is their duty to obey not to command." [30]

"There are likewise to be found in the Church of God two constituent elements, those who teach and direct, and those who listen and obey. The former constitute the Church teaching and governing, the latter form the Church taught and governed." [31]

The former are, of course, the clergy; the latter the laity. The duties of the laity are to show respect and deference to the clergy

". . . on account of their sacred character . . . (to) do homage to God in the person of His ministers, even when the conduct of the latter is not in keeping with the sanctity of their state"; and ". . . in proportion to their means and the circumstances of the case, to contribute towards the expenses of Divine service and the fitting support of the clergy . . ."

"The decisions, judgments, orders, and directions of . . . lawful pastors, in matters of doctrine, morals, discipline, and even administration, must be accepted and obeyed by all members of the Christian society, at least

[30] *C. E.*, vol. viii, p. 751 a.

[31] Discourse of the Most Rev. Edward D. Howard, D.D., Archbishop of Oregon City, at enthronization of the Bishop of Spokane; *The Catholic Mind*, Oct. 22, 1927.

in as far as they are subject to that authority . . . In the case of the Christian society, authoritative decisions and directions, in as far as they are concerned with faith and morals, bind not merely to exterior acts and formal obedience; they are, moreover, a matter of conscience and demand loyal interior acceptance." [32]

The subjection of the clergy and the episcopate to the sovereignty of the Pope and the extinction of all jurisdiction in the laity are developments rooted largely in one eventful century, from 1250 to 1350. The crippling and the demoralization of the Empire developed with the death of the Emperor Frederick II in 1250 [33] when the Papacy was enjoying the world-wide dominion to which the genius of Pope Innocent III had raised it. But the glory of Innocent's creation was of short duration and with the death of Pope Boniface VIII in 1303 the medieval Papacy fell.[34] In half a century the

[32] *C. E.*, vol. viii, pp. 749 d–750 a.

[33] "With Frederick fell the Empire. From the ruin that overwhelmed the greatest of its houses it emerged, living indeed, and destined to a long life, but so shattered, crippled, and degraded, that it could never more be to Europe and to Germany what it once had been." Bryce, p. 212.

[34] "With Boniface VIII fell the mediæval Papacy. He had striven to develop the idea of the Papal monarchy into a definite system. He had claimed for it the noble position of arbiter amongst the nations of Europe. Had he succeeded, the power which, according to the mediæval theory of Christendom, was vested in the Empire, would have passed over to the Papacy no longer as a theoretical right, but as an actual possession; and the Papacy would have asserted its supremacy over the rising state-system of Europe. His failure showed that with the destruction of the Empire the Papacy had fallen likewise. Both continued to exist in name, and set forth their old pretensions; but the Empire, in its old aspect as head of Christendom, had become a name of the past or a dream of the future since the failure of Frederick II. The failure of Boniface VIII showed that a like fate had overtaken the Papacy likewise." Creighton, *History of the Papacy*, vol. i, p. 32.

struggle of the Two Powers for the dominion of the Western world resulted in disaster to both, and both entered the valley of humiliation.

After the crippling of Empire and Papacy, the latter turned from conflict with the Emperors to a struggle with the democratic principle which still asserted itself within the Church. The theories at hand for the contestants had been developed by St. Thomas Aquinas (1225–1274), Dante (1265–1321) and Marsilius of Padua (1270–1342).

Aquinas was the great artificer of the Papal sovereignty; Marsilius the great defender of State sovereignty; Dante, in his treatise *De Monarchiâ*, stood between the two.

In his treatise Dante developed the principle of a single universal sovereignty in the Emperor for the whole world, without denying to the Pope the headship in the spiritual welfare of the world, to whom the Emperor was "to do honour as to the first-born of the Father." [35] The *Catholic Encyclopedia* [36] summarizes his teaching as showing that such

"a single supreme temporal monarchy as the empire is necessary for the well-being of the world, that the Roman people acquired universal sovereign sway by Divine right, and that the authority of the emperor is not dependent upon the pope, but descends upon him directly from the fountain of universal authority, which is God."

The doctrine strikes a distinctly democratic note

[35] *E. B.*, vol. vii, p. 816 a; *cf.* E. Moore, *Studies in Dante*, pp. 1–28, especially p. 19.

[36] Vol. iv, p. 629 b; consult also Dante, *De Monarchiâ*.

in the reference to the people as the source of government, and the direct derivation of civic power from God, *i. e.*, independently of the Pope as God's Vicar.

Marsilius of Padua attached himself to the Emperor, Lewis the Bavarian, who had entered upon a stormy conflict with Pope John XXII. He published his treatise *The Defensor Pacis* in defense of the Imperial claims. In his advocacy of the supremacy of the Emperor, and in his definition of the Emperor's relation to the Church, he developed a theory of the union of Church and State quite as detestable as the Roman theory of the Two Powers, the English theory of the State Church, or the Lutheran theory of the supremacy of the secular prince. But his book contained a remarkable expression of principles which have been incorporated in the modern State. In his *Defensor Pacis*, principles of human freedom and modern theories of political development which we recognize today are set forth with clearness and cogency. The principles of modern democracy seem but a response to the voice of the great Paduan:

"We declare that according to the Truth and to the opinion of Aristotle, the Lawgiver, . . . the primary, essential and efficient source of law, is the People, that is the whole body of citizens or a majority of them, acting of their own free choice openly declared in a general assembly of the citizens and prescribing something to be done or not done in regard to civil affairs under penalty of temporal punishment. I say a majority, taking account of the whole number of persons in the community over which the law is to be exercised. (It makes no difference) whether the whole body of

citizens or its majority acts of itself immediately or whether it entrusts the matter to one or more persons to act for it. Such person or persons are not and cannot be the Lawgiver in the strict sense, but only for a specific purpose and at a given time and on the authority of the primary lawgiver." [37]

Marsilius considers the exclusion of the laity from jurisdiction in the Church. He examines the definition of the word Church (*ecclesia*) and claims that it has come to mean the ecclesiastics and presiding officers, the Pope and his Cardinals, in the Diocese of Rome. Against this he contends, holding that the Church consists of all those who belong to it, that

"by the witness of Scripture in both its literal and its mystical sense, according to the interpretation of holy men and other approved doctors, that neither the Roman bishop called 'pope' nor any other bishop, presbyter, or deacon has a right to any sovereignty (*principatum*) or judicial authority (*judicium*) or coercive jurisdiction over any priest, ruler, community, association, or individual of whatsoever condition . . ." [38]

And again,

"I say that no one has the right to coerce the heretic or other infidel by any penalty or punishment, real or personal, so far as his status in this life is concerned." [39]

Marsilius denies the Scriptural proof of the pontifical sovereignty or Primacy of Jurisdiction; ques-

[37] See Emerton, pp. 24–25.
[38] *Ibid.*, p. 36.
[39] *Ibid.*, p. 41.

tions whether St. Peter was ever at Rome, but would recognize the traditional Primacy of Honor of the Roman See; defends the power of a General Council of the whole Church over the Pope; insists that such General Council should be called by and act under the protection of the head of the State.[40]

Aquinas laid the foundations of Papal sovereignty as now accepted in the Roman Church. He taught that all kings over Christian people ought to be subject to the Roman Pontiff as to Jesus Christ Himself;[41] that the necessary effect in the medieval state of the excommunication by the Pope of a secular ruler was to release subjects from civil authority and to make void oaths of allegiance;[42] and he further supported the

[40] *Ibid.*, pp. 44–54; *C. E.*, vol. ix, p. 720 b; *E. B.*, vol. xvii, p. 775 c.

[41] See Gierke, *Political Theories of the Middle Age*, p. 112.

[42] Dr. Dunning (vol. i, p. 206) sums up the teaching of Aquinas on the relation of the Church to secular rulers thus: "Hence, while the king is supreme in temporal affairs, these must be directed to the higher end, and to this extent he is subject to the priest under the law of Christ." Again (*ibid.*, p. 207): "The instant that the church declares him (the secular ruler) excommunicated for apostasy, his subjects are *ipso facto* released from his authority, and their oaths of allegiance lose all binding force." Emerton, p. 7: "The political doctrines of Aquinas work out, therefore, to the ultimate supremacy of the papal government over all the civil authorities of Christendom."

Pope Leo XIII commends St. Thomas Aquinas as the great supporter of obedience to those higher powers that in the Pope are regarded by the Church as superior to the rule of princes: "For the teachings of Thomas on the true meaning of liberty, which at this time (1879) is running into license, on the divine origin of all authority, on laws and their force, on the paternal and just rule of princes, on obedience to the higher powers, on mutual charity one towards another—on all of these and kindred subjects have very great and invincible force to overturn those principles of the new order which are well known to be dangerous to the peaceful order of things and to public safety." See Encyclical Letter *Æterni Patris*, The Study of Scholastic Philosophy, in G. E. L., pp. 54–55.

authority of the Church by his doctrine of the obligation of the State to exterminate by death those whom the Church declared to be heretics.[43]

The Church put Dante's *De Monarchiâ* on the Index, after burning it in public at Bologna;[44] excommunicated Marsilius, and beatified Aquinas. Thus, over five centuries ago the Church which Latin Christianity had developed, elected, at the crossing of the ways, to follow the path of sovereignty leading from the Inquisition to the Lutheran schism, to the *Syllabus* of Pope Pius IX, to the *Pastor Æternus* of the Vatican Council, to the Encyclical Letter *Immortale Dei* of Pope Leo XIII. Her ears were closed to the wisdom of Dante and of Marsilius, and her heart hardened to every recognition in her philosophy and her constitution of government by the consent of the governed. She continued to turn a deaf ear to the voices of the wisest of her scholars. Gerson[45] and Cardinal Nicholas of Cusa[46] pleaded with her to acknowledge the authority of General Councils; Cardinal Pierre d'Ailly[47] taught that the unity of the Church depended, not on "the unity of the Pope, but on that of Christ." The saintly Cardinal and Prince Bishop of Diepenbrock[48] assented as late as 1850, that her reform required "an alteration in the hierarchy, a softening of the sharp distinction between clergy and laity, a coöperation of the people in Church-

[43] See *supra* p. 28.

[44] Moore, *Studies in Dante*, p. 17. Dante's bones were with difficulty preserved from the wrath of the Pope's Legate.

[45] *C. E.*, vol. vi, p. 532 b.

[46] *Ibid.*, vol. xi, p. 61 c.

[47] *Ibid.*, vol. i, p. 236 b.

[48] Janus, Preface, pp. xvi-xvii.

government, and a transformation of the Roman Court. . . ." " . . . a return to the past," he wrote, "is an impossibility in history. The Middle Ages are left behind once for all . . . "; and again, " . . . The necessity of a complete renovation of the Church is already dawning on the vision of all who think without prejudice. . . ." Within twenty years the Roman Church replied by enacting the Constitution *Pastor Æternus*, and, pursuing the madness of her course, excommunicated men like Döllinger and Tyrrell.

The doctrines of Marsilius and Aquinas came to a supreme issue in the conciliar struggle. The Great Schism, characterized by the conflicting claims of several different Popes, extended from 1378 to 1417. Pope Gregory XI terminated the residence of the French Popes at Avignon and again made Rome the seat of the Papal Court. He died there in 1378. The question of the nationality of the Pope became one of importance. An Italian meant Rome; a Frenchman meant Avignon. This caused divisions in the College of Cardinals, and precipitated the Great Schism when the claims of two to three Popes divided the allegiance of Christendom. The scandal became so great, and the paralysis of authority in the Church so complete, through the conflict of the claimants and their vigorous exchange of excommunications, that the Church itself in the interest of self-preservation had to act. Quite in derogation of Papal theory that the Pope alone could act, a group of Cardinals took command and issued an Encyclical Letter calling the Church to a General Council at Pisa in 1409. The Council met and deposed the two existing claimants

to the Papacy for schism, heresy, perjury, and the scandalizing of the Church. It declared the Holy See vacant and elected Alexander V as Pope, making three claimants to the Papal throne. The authority of the Council of Pisa is disputed by Roman Catholic authority because it was not summoned by the Pope; nevertheless it is used in Roman Catholic argument as a stepping-stone in legalism to the validity of the succeeding General Council of Constance (1414). That Council disposed in various ways of the various claimants to the Papacy, not without much protest on their part, and terminated in the election of Martin V as the sole and legitimate Pope.[49] At its close in 1418 it had asserted the subordination of the Pope to a General Council of the Church by the enactment of the famous Five Articles of Constance, to which Roman Catholic authority gives this condensed expression:

". . . the council, legitimately called in the Holy Spirit, is a general council, represents the whole Church Militant, has its authority directly from God; and that in all that pertains to faith, the extinction of the schism and reformation in head and members, every Christian, even the pope, is bound to obey it; that in case of refusal to obey the council all recalcitrant Christians (even the pope) are subject to ecclesiastical punishment and in case of necessity to other (civil) sanctions; that without the consent of the Council Pope John cannot call away from Constance the Roman Curia and its officials, whose absence might compel the closing of the council or hinder its work; that all censures inflicted

[49] See *C. E.*, vol. xiii, pp. 539–541; vol. xii, pp. 112–114; vol. iv, pp. 288–293.

since his departure by the pope on members and supporters of the council are void, and that Pope John and the members of the Council have hitherto enjoyed full liberty." [50]

The legality of the election of Martin V as Pope, and the continuity of the Papal office, depended on holding that the Council of Constance was a legal and authoritative body. On the other hand, if it was held to be such, Papal absolutism was in danger because by the terms of the Five Articles the Church, acting in its representative Council, would be supreme over the Pope and government by the consent of the governed would be sanctioned. The result was that in Papal doctrine the sessions of the Council covering the proceedings which appertained to the election of Pope Martin V were legal and authoritative; on the other hand, the sessions covering the proceedings that recognized government by the consent of the governed were held illegal and unauthoritative; that is to say, the Council was Ecumenical in so far as it supported the absolutism of the Pope and not Ecumenical in so far as it declared for government by the consent of the governed. Pope Martin V confirmed that part of the proceedings that related to his election, but refrained from confirming that part which pronounced in favor of government by consent of the governed.[51]

The effort of the Church in its own General Council to assert its supremacy over the Pope, and to secure some recognition that government in the Church de-

[50] *Ibid.*, p. 289 a.

[51] *C. E.*, vol. iv, p. 291 b, c. See Woywod, vol. i, pp. 86–87 (Canons 222–229); vol. ii, p. 199 (Canon 1556).

rives its just powers from the consent of the governed, was thus wholly nullified, and the Papacy took another step toward the decrees of the Vatican Council of 1870.

Absolutism is the negation of that law of States that has immutability except as it changes constitutionally by the consent of the governed. That such law is unknown in the Roman Church its authorities admit. The reason for it is clear: its law is not derived from the consent of the governed nor administered with any right of appeal to them. We would now ask: whence is it derived and what is its nature? This brings us to the vast and erudite subject of the Canon Law—the *Corpus juris canonici*,[52] of which only the initiated can speak, and to them we must entirely defer.

We refer to the statements of the *Catholic Encyclopedia:*

"Canon law is the body of laws and regulations made by or adopted by ecclesiastical authority, for the government of the Christian organization and its members." [53]

"Canon law may be divided into . . . Divine law . . . based on the nature of things and on the constitution given by Jesus Christ to His Church; and human

[52] By the Bull *Providentissima Mater Ecclesia* Pope Benedict XV in 1918 promulgated the "Code of the Canon Law," a compilation intended as a step toward reducing to human comprehension the vast *Corpus juris canonici* of the ages. In considering that law it is necessary in strict accuracy to refer to the Code with a view to ascertaining whether any change has been made. The foundations of Papal power involved in our discussion would seem to be quite unmodified by the Code, which by Canons 5 and 6 makes express repeal of the existing law, or obvious conflict between it and the new Code, necessary to its nullification. See Woywod, vol. i, pp. 3–4.

[53] *C. E.*, vol. ix, p. 56 d.

or positive law, formulated by the legislator, in conformity with the Divine law." [54]

"This Christian Divine law . . . is found in the Gospels, in the Apostolic writings, in the living Tradition, which transmits laws as well as dogmas. On this positive Divine law depend the essential principles of the Church's constitution . . ." [55]

The Divine law "based on the nature of things," is the "natural law," and this is later defined as " . . . the rule of conduct which is prescribed to us by the Creator in the constitution of the nature with which He has endowed us." [56] Such law is obviously a matter of human inference and reason, on which opinion will differ unless bound to unanimity in the decision of some ultimate authority. It is without volume or page; it inheres in the consciousness of man. The Roman Catholic in the ultimate determination of the law accepts the conclusion of the Pope.[57]

"The Divine law based . . . on the constitution given by Jesus Christ to His Church" has at least verbal expression. It is the positive Divine law contained in the Gospels, in the Apostolic writings and in the living Tradition, and "on this positive Divine law depend the essential principles of the Church's constitution." While those "essential principles" may be contained in the sources alluded to, there is and always has been a wide and emphatic difference of opinion throughout the Christian world as to what those principles are. It is

[54] *Ibid.*, p. 57 a.
[55] *Ibid.*, p. 58 d; *vide supra* p. 35.
[56] *C. E.*, vol. ix, p. 76 d.
[57] See chapter II, p. 35 and notes.

a question that depends entirely upon interpretation and construction. The Roman Catholic believes that those "essential principles" declare the supremacy of the Roman See. This is denied by all other Christians. It was the cause of the separation of the Eastern or Greek Churches from communion with the Roman See a thousand years ago and, in the sixteenth century, led to the separation therefrom of all English, Scandinavian and Teutonic Christianity. There is, therefore, no universal Christian consensus deduced from the Gospels and the Apostolic writings, or from Tradition, supporting Papal supremacy. The Constitution *De Fide Catholica* declares that in matters of faith and morals that is to be held as the true sense of Holy Scripture which the Roman Church hath held and holds.[58] The *Pastor Æternus* [59] makes the teaching of the Pope the teaching of the Church.

The living Tradition is, in the same way, voiced by the Pope.[60]

Summing up the constitutional limitations of Papal sovereignty, the *Catholic Encyclopedia* states as follows:

[58] *Cf.* p. 35, note 41.

[59] Appendix I. p. 285. The supremacy of the Pope in the promulgation of dogma without direct proof from Scripture is evidenced in the promulgation in 1854 by Pope Pius IX, without a Council of the Church, of the dogma of the Immaculate Conception: that the Blessed Virgin Mary "in the first instant of her conception . . . was preserved exempt from all stain of original sin" (*C. E.*, vol. vii, pp. 674 d–675 a). Roman Catholic theologians admit that "no direct or categorical and stringent proof of the dogma can be brought forward from Scripture" (*ibid.*, p. 675 b). They also admit that the Tradition of the Church was not agreed upon it (*ibid.*, p. 675 c), but it became an article of faith necessary to salvation by the declaration of Pope Pius IX.

[60] See *supra*, p. 35.

" 'The pope', [as Cardinal Hergenröther well says] 'is circumscribed by the consciousness of the necessity of making a righteous and beneficent use of the duties attached to his privileges . . . He is also circumscribed by the spirit and practice of the (Roman) Church, by the respect due to General Councils and to ancient statutes and customs, by the rights of bishops, by his relation with civil powers, by the traditional mild tone of government indicated by the aim of the institution of the papacy—to "feed"—and finally by the respect indispensable in a spiritual power towards the spirit and mind of nations.' " [61]

These words support our contentions that the constitutional limitations of the Pope are, from the standpoint of the secular mind, imaginary. Power limited by human "consciousness", by the "spirit" of an institution, by "respect", by "the rights of bishops" who are wholly subject to the Pope, by "relation", by "traditional mild tone", is not in reality limited. The limitations suggested could affect only the discretion and wisdom of the Pope, and, as such, are in no sense of the word legal limitations.

Of the Pope as the true source of the Canon Law and supreme authority over the same, the *Catholic Encyclopedia* makes several statements, of which the following is an abridgment:

The sources of . . . positive ecclesiastical law are essentially the episcopate and its head, the pope . . . The pope, as head of the episcopate, possesses in himself the same powers as the episcopate united with him . . . In proportion as the administration of the Church

[61] *C. E.*, vol. xii, pp. 269 d–270 a.

became centralized, the intervention of the Popes in legislation became more and more marked . . . They are the fruitful source of Canon Law; can abrogate all laws made by predecessors or Councils, legislate for the whole Church or for a part, for a particular country, or for individuals. The Pope is not legally obliged to obtain the consent of any person or persons; is limited only by Divine law, natural and positive, dogmatic and moral. He is the living law, having all law in the treasury of his heart . . . From the earliest ages the letters of the Roman Pontiffs constitute, with the canons of the councils, the principal element of Canon Law.[62]

The Pope's office is to explain and interpret the law. His interpretation alone has the force of law. He remains master of the law. He can suppress it either totally or partially.[63]

The Pope is subordinated to none save Christ alone. He is the supreme teacher as he is the supreme ruler, but his powers do not extend to matters that are extrinsic to the Church.[64]

The Pope can dispense individuals from the obligation of all purely ecclesiastical laws, and can grant privileges and exemptions in their regard.[65]

Gratian, the "true founder of the science of canon law," [66] condenses the doctrine of Papal sovereignty in relation to that law, as follows:

"They (the popes) are above all the laws of the

[62] *C. E.*, vol. ix, p. 59 a, b.
[63] *Ibid.*, p. 65 a, b.
[64] *Ibid.*, vol. xii, p. 265 d.
[65] *Ibid.*, p. 269 c.
[66] *Ibid.*, vol. vi, p. 730 d.

Church, and can use them according to their wish; they alone judge and cannot be judged." [67]

Mr. Carlyle expounds the teaching of Gratian on the relation of the Popes to the Canon Law:

". . . He urges first of all that the Pope gives validity and authority to the canons, but is not bound by them; he has the authority to make canons, as being the head of all churches, but in making canons he does not subject himself to them. He follows the example of Christ, who both made and changed the law, who taught as one who had authority, and not as the scribes, and yet fulfilled the law in His own person. So also at times the Popes subject themselves to the canons; but at other times, by their commands or definitions, show themselves to be the lords and founders of the canons. Gratian therefore interprets the passages which he has cited as imposing upon others the necessity of obedience, while the Popes may obey if they think fit. (*Pontificibus . . . inesse auctoritas observandi*). The Roman See, therefore, should respect what it has decreed, not through the necessity of obedience, but *auctoritate impertiendi.* It is therefore clear that the Popes may grant special *privilegia* contrary to the general law. But again, Gratian urges, it must be remembered that, strictly speaking, such *privilegia* are not really contrary to the canons, for the interpretation of the law belongs only to him who has the right of making laws, and therefore to the Roman See . . . *Privilegia,* therefore, granted by the Roman See are not really contrary to canonical order." [68]

[67] *E. B.*, vol. xx, p. 695 d.

[68] Carlyle, vol. ii, pp. 172–173. See also D. Lindner, *Die Lehre vom Privileg nach Gratian und den Glossatoren des Corpus Juris Canonici,* pp. 43–44.

From the above excerpts giving the Roman Catholic doctrine, present and past, it is apparent that so absolute is Papal power that the Pope, without the repeal of the Church law, can exempt from it a person or persons, a matter or matters, or even confer rights in derogation of the express law by a system of Papal grants known as privileges (*privilegia*) or dispensations. This explains why in certain emergencies sons of the Church may speak or act in violation of the law of the Church, or in derogation of its doctrine, without incurring censure or rebuke. That the *privilegium* or dispensation is tacit in no wise impairs its efficiency.[69] That which absolutism permits, absolutism commands. But such action on the part of the Pope or the Hierarchy in no wise approves the words or acts in question. It merely excepts them, and the law and teaching of the Church remain the same except for the recipient of the *privilegium*. Dr. Lindner in his treatise on the *Privilegium* says (p. 12) that modern philology explains it as law which refers to a particular individual only;[70] that the Canonists teach that a *privilegium* of the Apostolic Chair is valid even if the document concerning it is not issued,[71] and that three reasons have been expressly recognized for its grant, *i. e.*, the promotion of religion, necessity, or reward for a service rendered.[72]

[69] *C. E.*, vol. v, p. 41 b. See also Woywod, vol. i, pp. 30–36 (Canons 63–86).

[70] " . . . ein Gesetz, das sich nur auf einen einzelnen—privus—bezieht."

[71] p. 65: " . . . ein Privileg des apostolischen Stuhles gültig ist, auch wenn das Schriftstück darüber nicht vollständig ausgestellt ist."

[72] p. 44: *"Privilegia, quae ob religionis vel necessitatis vel exhibiti obsequii gratiam conceduntur."*

The modern State may well stand aghast at the operation in its midst by a religious sovereignty of such a ". . . system of tactics against which," as Macaulay said long ago, "reason and scripture were employed in vain." [73] Nevertheless, some recent events disclose a widespread public opinion that it is employed in current matters by the Roman See.

In a recent issue, *Blackwood's Magazine* [74] discusses the proceedings of the Vatican against the journal *l'Action Française* and its editors, MM. Maurras and Daudet. This journal represents the French political party known as *Action Française*, which aims to secure the legitimate amendment of the French Constitution so as to establish a constitutional monarchy. The Vatican has put the journal on the Index of Prohibited Books, not, it is said, because of its politics but because of the atheistic opinions of its editors and their profane and immoral expressions.[75] We quote from *Blackwood:*

". . . And at the very time that this policy of persecution is initiated in France against an active and patriotic party in the State, the Roman Catholics of America are permitted to claim their full political freedom without reprobation, disavowal, or remonstrance. 'I recognize no power in the institutions of my Church,' says Mr. Alfred Smith, the Roman Catholic Governor of the State of New York, 'to interfere in the practice of the Constitution of the United States, or in the ex-

[73] *Critical, Historical, and Miscellaneous Essays and Poems,* vol. ii, p. 487 (on Von Ranke).

[74] October, 1927, pp. 566–575.

[75] For a further consideration of the incident see *infra,* pp. 252–257.

ecution of the laws of my country.' The Pope has sent no message of authority to Mr. Alfred Smith. He has left him in possession of his own opinions. Wisely do MM. Daudet and Maurras demand that they remain in possession of theirs. 'No one,' they declare, 'shall take them from us.'"

The lofty and generous sentiments in respect to religious liberty expressed by Governor Smith in his article in the *Atlantic Monthly* [76] are also referred to by the Parisian journal, *L'Europe Nouvelle*, in a recent issue,[77] as follows:

"Nevertheless these opinions that are universally admitted in the United States not only by the Catholic laity, but by the priests and the bishops, do not appear to arouse the least condemnation at Rome. Perhaps the reason for this strange phenomenon is to be sought in the fact that Americans do not hear announced a universal doctrine which would apply to the whole Catholic Church, but solely one that would defend and support their special privileges which are considered as in derogation of the common ecclesiastical law.

[76] May, 1927, p. 721.

[77] July 16, 1927, p. 926. Et pourtant ces idées, qui sont universellement admises aux Etats-Unis, non seulement par les catholiques laïques, mais par les prêtres et les évêques, ne paraissent pas soulever à Rome la moindre réprobation. Peut-être faut-il chercher la raison de cet étrange phénomène dans le fait que les Américains n'entendent pas énoncer une doctrine générale qui dût s'appliquer à toute l'Eglise catholique, mais seulement défendre et maintenir leurs propres franchises considérées comme dérogation au droit ecclésiastique commun. Le Saint-Siège admet, en effet, qu'il peut, en certains cas d'espèce, y avoir dérogation à ce droit commun du fait d'un concordat, ou d'un privilège ou d'une coutume immémoriale. Et il semble bien que l'Eglise américaine soit, grâce à la Constitution des Etats-Unis, en possession d'un tel régime particulier."

See *El Sol,* Madrid, and *El Debate,* in *Living Age,* June 15, 1927.

"The Holy See admits, in effect, that it can in certain special cases act in derogation of that common law by means of a concordat or of a privilege or of an immemorial custom. And it may well be that the American Church is by the grace of the Constitution of the United States in possession of such particular arrangement."

Thus Europeans claim to find proof that the authoritative and universal doctrine of the Roman Church is irreconcilable with American constitutional principles, although by the machinery of the Canon Law such irreconcilability is locally and temporarily accommodated as expedient because of present constitutional requirements,[78] and that under this marvelous system a local Hierarchy approves opinions that are obnoxious to such universal and authoritative doctrine, and the Vatican is silent, or professes its entire indifference to politics in America, while at the same time it proscribes opinions in France and puts a political jour-

[78] Mr. George N. Shuster, Associate Editor of *The Commonweal,* the leading Roman Catholic journal in New York, in his recent work *The Catholic Spirit in America,* says (pp. 122–123): "The candidacy of Governor Alfred E. Smith has been challenged, in public and in private, because of what his profession of faith has been believed to imply. I may be pardoned for saying here that while I am interested, like every other private citizen, in Mr. Smith's record as an executive and in his fitness for high office, I am thoroughly convinced that no real point of principle ought to be sacrificed or ignored in his behalf. Indeed the worst thing that could happen to Catholics in this country is that they should be impelled . . . into willingness to repudiate an essential part of their tradition. Realization of this fact induced Mr. Smith himself to entrust that portion of his argument which concerned the specific teachings of the Church to a trained theologian."

nal there on the Index, with the inevitable result of promoting the influence of the Pope against the Civic Primacy of the French People.[79] Such proceedings are utterly antagonistic to the democratic conception of law as universal and immutable, except as it changes, as Lincoln said, with deliberate changes of opinion constitutionally determined and universally expressed in the sovereignty of a free people [80]—words which seem more harmonious with the conception of law as derived from God through the Revelation of Jesus Christ than the words of Gratian and the teaching of the Roman Canonists.

It is well known that about 750 and 850, respectively, forged documents came into recognition as authentic; the Donation of Constantine [81] and the compilation of the Pseudo-Isidorian Decretals.[82] The contents of both in their terms enormously supported the claims to the pontifical sovereignty of the Pope. The Donation purported to be a great concession of power and territory made by the Emperor Constantine to Pope Sylvester I (314–335). The Decretals were, in part, forged letters purporting to be written by some thirty early Popes magnifying Papal rights and supporting Papal claims to the pontifical sovereignty. For seven hundred years these documents were universally regarded as authentic. About the middle of the fifteenth century they were abandoned as spurious,[83] but the towering fabric of a factitious Papal sovereignty, raised in part on their

79 See further facts stated, p. 252 *infra*.
80 *Supra*, p. 136.
81 *C. E.*, vol. v, p. 118 d.
82 *Ibid.*, p. 773 b, c.
83 *Ibid.*, pp. 119 b, 773 d.

authority, remained to crush the spirit of truth and to harass the natural liberties of man.[84]

Such is the Canon Law. "Supreme in Europe," says Dr. Luchaire, "the papacy gathered into a body of doctrine the decisions given in virtue of its enormous *de facto* power, and promulgated its collected decrees and *oracula* to form the immutable law of the Christian world." [85]

Such is the bulwark of the Roman Church against any encroachment on Papal sovereignty of the democratic development with its principles that governments derive their just powers from the consent of the governed, and that irresponsible power is never justified.

[84] Janus, pp. 94–95, 105–106.
[85] *E. B.*, vol. xx, p. 698 b.

CHAPTER IX

FREEDOM OF CONSCIENCE AND TOLERATION

Freedom of Conscience and Toleration are perhaps the youngest of human political ideals. They were, like modern democracy, born in the throes of revolutions. Scripture was their nurse and taught them St. Peter's doctrine that "we ought to obey God rather than men." [1] Those words were spoken by St. Peter in defiance of an edict of the State forbidding the Apostles to preach the religion of Christ. His words are commonly referred to as expressing a new and original idea, but in the moral life of man it was as old as time. Plato had recorded the saying of Socrates, "I go my way, obedient to the god . . . ," [2] and Socrates, defying the control of the State over conscience, had drunk of the cup of hemlock four centuries before the Cross. It is true that Peter's words connoted the new revelation from God of the Church of Jesus Christ. Nevertheless, he held conscience obedient unto God, not unto the Church or unto Peter.

The effort of man to maintain his sovereignty of conscience constitutes the most tragic story of history. In bargaining with the State for the surrender of his aboriginal rights, under the social contract, he has

1 Acts v, 29.
2 Plato, *Apology*, vol. i, p. 355.

bargained most closely for the retention of his rights of conscience, and when the State has insisted that they were included in the bargain he has always sought to evade delivery. The Roman State, in order to obtain possession of conscience, made religion one of its departments. It would permit of no loyalty to any ideal except itself, and put itself, during the Empire, in the place of God with the Emperor as *Pontifex Maximus*. Later, the Latin Church modified the Imperial conception of the State under the theory of the Two Powers—the State and the Church—to which God had appointed the charge of the human race with the Pope as *Pontifex Maximus*. In the appointment it was claimed that conscience fell to the Church. It was conceded that men ought to obey God rather than men; but since the Pope was the Vicegerent of God, obedience to God necessarily meant obedience to his Vicegerent, a conclusion that was finally made an article of faith by the Constitution *Pastor Æternus*.[3] " . . . the only-begotten Son of God," Pope Leo XIII asserted, "established on earth a society which is called the (Roman) Church, and to it He handed over the exalted and divine office which He had received from His Father, to be continued through the ages to come." [4] Conscience, which had evaded the ancient State, was finally captured by the Roman Church.[5] The Vicegerency of

[3] Appendix I, *infra* pp. 285–290.

[4] Appendix III, *infra* p. 308.

[5] Referring to his Church Archbishop Hanna of San Francisco says: " . . . she appears before the world as the arbiter of man's conscience, the custodian and interpreter of the 'shalt' and 'shalt not' of right reason . . ." H. A. Ayrinhac, *Marriage Legislation in the New Code of Canon Law,* Introduction, p. 6.

God, the Vicariate of Christ, became in human consciousness, under the medieval system, the source of moral truth and of political authority. The lesson of the Tribute Money was ignored, and the Latin Church instead of teaching men as a Church undertook to rule them as a sovereignty. The hands of Peter's successors dropped the pastoral staff to grasp the sword and sceptre, and his sacramental vestments alternated with the imperial robes of Pope Boniface VIII and the mailed armor of Pope Julius II. And yet the pastoral office of Peter, although concealed, was there. With reason could a discomfited Emperor, genuflecting low before a triumphant Pope draped with the insignia of a factitious sovereignty, utter the famous ascription, "Not unto you, but unto Peter."

The temptation of the Son of God was familiar to medieval ecclesiastical apologists. They knew that He had renounced " . . . all the kingdoms of the world, and the glory of them"; [6] yet they reserved from the Divine renunciation the world-throne on the Seven Hills for his putative Vicar, and at no point could the Church of Christ be separated from the things of Cæsar.

The rising nationalism of the sixteenth century broke the unity of the Empire, long decrepit, and the emergent national states began to develop diverse political allegiances. The Reformation then broke the unity of the Latin Church, and religious doctrines became as numerous as political claims and theories. Luther, it has been said, lifted religion out of the hands of the dead. The Renaissance awoke the human mind. Man began to think inductively and to cast off the prepos-

[6] Matt. iv, 8.

sessions of a deductive philosophy and *a priori* religious theories. In the physical world, as Thomas Carlyle has said, the invention of gunpowder made all men equal in war. Luther ventured the notion that the perusal of the Scriptures made all men equal in religion, and Francis Bacon the notion that induction would make them all equal in science. Experience did not remove these two notions from the category of fallacies, but some occurrences took place tending to show that a devout reader of Scripture, by the assistance of the Holy Ghost, might discern religious truth, and convince even the theologian of error. Copernicus, Bruno and Galileo compelled the Latin Church to admit that science was not one of its episcopal sees. Man looked forward to a Kingdom of Heaven, whereas the pagan mind had looked backward to a golden age. The notion of progress took possession of the human mind. Men read in the Scriptures of their mastery over the forces of evil, and, in the new science, of their mastery over the world of matter. But in the end the Church of Rome condemned the new order. It is error, declared Pope Pius IX, to say that "the Roman Pontiff can, and ought to, reconcile himself, and come to terms with progress, liberalism and modern civilization." [7]

The heretic triumphed in the downfall of the medieval Church and State. When the sixteenth century tore away the majestic insignia of the Church there was no unity beneath. Church membership had hitherto been based upon compulsory orthodoxy. There was neither a supernatural bond of conversion nor a consensus of intellectual conviction to sustain the vast

[7] *Syllabus,* Proposition LXXX, see appendix II, *infra* p. 303.

ecclesiastical structure. The Church had converted a universal pastorate into a universal sovereignty. With the sovereignty broken it speedily fell apart. The Latin Church, holding, in the City of Rome, *de facto* possession of the spiritual and intellectual capital of the Western world, and also full control of the governmental machinery of the Church, proclaimed itself to be the one Ecumenical Church, and has maintained even to the present day a *legalistic* continuity.[8] Multitudes of Christians detached from it were driven into national churches and alliances with secular states, at Augsburg, Canterbury and Geneva, as odious to the spirit of Christianity as the sovereignty usurped by the Roman See. The great company of skeptics, whom the iron hand of an orthodox Church, supported by an orthodox State, had forced into a formal membership in the Church during the Middle Ages, translated itself into a complex of honest doubt—a moral improvement at least in the social and religious order.

The struggle for freedom of conscience and toleration of opinion continued precariously through a period of disorder and bloodshed, to realize at last their legalization in the Treaty of Westphalia in 1648, in which, within the area of the old Empire, heretics were declared free from all jurisdiction of the Pope and of every Roman Catholic prelate.

"Thus the last link," [says Lord Bryce] "which bound Germany as a whole to Rome was snapped, the last of the principles by virtue of which the Empire had

[8] So it would seem the U. S. Supreme Court has held; see City of Ponce *vs.* The Roman Catholic Church, 210 U. S. 296.

existed was abandoned. For the Empire now contained and recognized as its members persons who formed a visible body at open war with the Holy Roman Church; and its constitution admitted schismatics to a full share in all those civil rights which, according to the doctrines of the early Middle Age, could be enjoyed by no one who was out of the communion of the Catholic Church. The Peace of Westphalia was therefore an abrogation of the sovereignty of Rome, and of the theory of Church and State with which the name of Rome was associated. And in this light was it regarded by Pope Innocent the Tenth, who commanded his legate to protest against it, and subsequently declared it void by the Bull '*Zelo domus Dei.*' " [9]

The Treaty of Westphalia, by confirming the Treaty of Passau (1552) and the religious peace of Augsburg (1555), and by extending their provisions to the Reformed (Calvinist) Church, secured toleration for the three great religious communities within the Empire.[10] The power of Papal sovereignty over Europe was thus broken. The development of the national kingdoms now went on hand in hand with the new-found freedom of conscience and toleration of opinion.

". . . The history," [says Dr. Laski] "of the ensuing three centuries (after 1550) is the record of a transference of sovereign power from a single head to the general body of the state. By Rome alone, in Western Europe, was this tendency successfully resisted; and by Rome alone has the maintenance of absolutism been consistently secured. The knowledge of

[9] Bryce, 392 and note b; see also *supra* p. 99.
[10] *E. B.*, vol. xxviii, p. 558 a.

her vast pretensions was, throughout the nineteenth century, a fertile source of diplomatic difficulty. It was from those pretensions that, little by little, the states of Europe were compelled to build up what is essentially an alternative scheme of civic life. It was those pretensions which made of toleration the ultimate dogma of modern politics. It was those pretensions which resulted in the stern control of Catholic life. The Roman church was nowhere free. Her claim to statehood was on all sides met by the response that her competing system of allegiance was incompatible with the sovereignty of the state." [11]

Multifarious political and religious opinions compelled the recognition of those two ideals which the Middle Ages had never delighted to honor. Freedom of conscience and toleration were born into the new order of a necessity that over-rode theories and defied institutions. The Church of Rome could not accept either. Pope Gregory XVI declared freedom of conscience a mad delirium [12] and Pope Innocent X declared tolerance intolerable.[13] Both ideals nullified the very office which had been attached to the pastorate of

[11] *Authority,* p. 264; See also Janus, pp. 21–22: " . . . (The Roman) Church and State are like two parallel streams, one flowing north, the other south. The modern civil Constitutions, and the efforts for self-government and the limitation of arbitrary royal power, are in the strongest contradiction to Ultramontanism, the very kernel and ruling principle of which is the consolidation of absolutism in the (Roman) Church."

[12] Encyclical *Mirari vos* (15 August, 1832). See Mirbt, *Quellen zur Geschichte des Papsttums und des Römischen Katholizismus,* p. 439. (Translation): "And out of this most corrupt fountain of indifferentism there flows this erroneous opinion or rather madness (*deliramentum*) that the freedom of conscience of each individual ought to be asserted and vindicated:"

[13] Bull *Zelo domus Dei* (1648) *vide* p. 99, *supra.*

Peter, and which, by associating a human sovereignty with the Godhead Itself,[14] had made such sovereignty supreme in theory over moral truth and political authority, and superior to the promptings of the individual conscience.

The eminent Jesuit, the Reverend John Rickaby, writing in the *Catholic Encyclopedia*,[15] says:

"The natural conscience of the Christian is known by him to act not alone, but under the enlightenment and the impulse derived from revelation and grace in a strictly supernatural order."

Of this Revelation and this grace, in a strictly supernatural order, the Roman Catholic Church, in its theory, is the sole recipient, dispenser and representative. Within that Church conscience is not free. As Father Rickaby says, it cannot act alone; it is bound by the law of a religious sovereignty. Pope Leo XIII, as we have seen, condemned conditions in the modern State because, he said, "the judgment of each one's conscience is independent of all law." [16] He had to condemn a system whose principles wrested conscience from his own jurisdiction, and from the law of his Church. And yet conscience in the modern State must be free, not only from law but also from human com-

[14] In a very recent work published in the shadow of the Vatican and dedicated to Cardinal Gasparri, the Papal Secretary of State, it is declared *ipsissimis verbis*, "The Pope here on earth is Christ." ("Il Papa, qui in terra, è Cristo; ditelo altrimenti Vicario di Cristo, o successore di Pietro, e direte tutta una cosa"). L. Lucantonio, *La Supernazionalità del Papato*, p. 71. This book is published with a preface by a Roman Monsignor.

[15] Vol. iv, p. 269 b.

[16] *Supra*, p. 105.

pulsion, for conscience is the *free* sense of right and wrong. It may be guided by such illumination as the individual may choose to avail himself of *in the exercise of a free consciousness*. But a law, a dominion, a foreign religious sovereignty over it, or over the sources of its illumination, destroy the autonomy of conscience.[17]

The Roman Church claims to deliver the conscience of man from the grasp of an omnipotent State, although the modern State has renounced omnipotence in its government and imposed constitutional limitations. But the Roman Church puts conscience into the keeping of an omnipotent Pope who knows no constitutional limitation. St. Ignatius Loyola said in the sixteenth century:

". . . the white that I see I would believe to be black, if the Hierarchical Church were so to rule it . . ." [18]

Cardinal Mercier in the twentieth century:

"The papacy—the accepted and cherished supremacy of one conscience over all other consciences, of one will over all other wills!" [19]

Pope Leo XIII in 1890:

". . . the supreme teacher in the Church is the Roman Pontiff. Union of minds, therefore, requires, together

[17] The concession is made that if, after diligent effort, the individual cannot reconcile the dictates of his conscience with the law of the Pope he must follow his conscience. This has been considered at p. 21, *supra*.

[18] *The Spiritual Exercises of St. Ignatius Loyola,* with a Continuous Commentary by Joseph Rickaby, S. J., p. 223.

[19] Pastoral Letter on the election of His Holiness, Pope Pius XI.

with a perfect accord in the one faith, complete submission and obedience of will to the Church and to the Roman Pontiff, as to God Himself." [20]

It will thus be seen that the tradition of the Roman Church, to say the least, does not favor the freedom of conscience. Indeed it condemns it; the Living Voice of the Supreme Pontiff is raised against it; and the Constitution *Pastor Æternus* by asserting the prerogatives of supremacy and infallibility proscribes it.

An apprehension is not to be disparaged of certain excesses to which the State may go in enacting laws, obedience to which would require the violation of the individual conscience. But the inviolable right to revolt would quickly adjust the wrong. Revolt against the State would not be deterred by any State doctrine that its ruler occupied the place of God, or that its government was Divinely ordained. Furthermore, the State has no *post mortem* penalties. *Vox populi vox Dei* is dead of its own absurdity. We would go no further than to insist that the record of the modern State is at least as good thus far as that of the Roman Church in this matter of legislative excesses. Mr. Belloc is very much concerned over the prospect of State legislation compelling the extirpation of those who are defective in mind, and he says that for a Roman Catholic to obey such a law or to support it would be murder.[21] A great multitude who are not Roman Catholics would, we believe, likewise regard it as murder. What we are unable to understand is that the possible extirpation of

[20] See Encyclical Letter *Sapientiæ Christianæ,* On the Chief Duties of Christians as Citizens, in *G. E. L.,* p. 193.

[21] *The Contrast,* p. 163.

mental defectives by the State should so shock Mr. Belloc's sensibilities, when the Church for so many centuries insisted on the extirpation of religious defectives,[22] and no one thought it was murder! The extirpation of defectives and the extirpation of heretics seem alike reprehensible.

The conclusion may be ventured that the only safe way for conscience is to deny a Divine sovereignty to the Church of Rome, thereby reserving to individuals their freedom of conscience and the right to revolt, free from *a priori* convictions that any official, ecclesiastical or secular, occupies upon this earth the place of God, or is intrinsically the Vicar of Christ.

In respect to the principle of tolerance—"the ultimate dogma of modern politics"—a counter-principle of theoretical dogmatic intolerance has been developed by the Church of Rome. This is set forth by the Reverend Dr. Pohle in the *Catholic Encyclopedia*.[23] We would concede at the outset that Dr. Pohle expresses the most fraternal charity and the greatest sympathy for those against whose opinion the theoretical dogmatic intolerance of his Church is directed. He is emphatic in his assurances that the Roman Catholic

[22] Of course no claim is here made that the extirpation of heretics or religious persecution of any kind was limited to the Latin Church. In certain aspects, Protestantism was a greater offender, at least in its theory. Lord Acton points out (*History*, p. 158), that at Schmalkald and Augsburg, the definition of the Church made excommunication equivalent to damnation, not allowing, as the Roman doctrine allows, that excommunication may be erroneous. The submergence of the Church in the State, in the Lutheran theory, often made the end of persecution purely political, whereas at least in the Roman Catholic Church the end was theoretically religious. (*Ibid.*, pp. 150, 187.)

[23] *C. E.*, vol. xiv, p. 763.

Church would enjoin upon its members the careful observance of those constitutional guarantees which, in the United States for instance, are of the very essence of tolerance. Dr. Pohle even quotes with approval the words of Professor Walter in reference to those States in which various religions exist:

". . . The government as such, entirely regardless of the personal belief of the sovereign, must maintain towards every church the same attitude as if it belonged to this (Roman Catholic) Church. In the consistent and upright observance of this standpoint lies the means of being just to each religion and of preserving for the State its Christian character." [24]

But Dr. Pohle only asserts what all intelligent and reasonable people admit: that Roman Catholics will observe existing constitutional provisions and respect a *de facto* situation that circumstances make unalterable. In honor, they would not violate the former, and, in reason, they could not disregard the latter. But Roman Catholic doctrine, sincerely and frankly expressed, must require the amendment of existing constitutional guarantees of religious liberty that violate the principles of objective truth as defined by the Roman Catholic Church. Tolerance as a vital principle, in objective truth, of modern intellectual and religious life and theory, is recognized by the modern State,[25] and by the religious and ethical societies within it except the Roman Catholic Church. It is a tolerance that is limited only by public opinion formed in a *free* moral

[24] *Ibid.*, p. 772 d.

[25] The limitations on State tolerance of religious liberty are considered *infra* Chapter X.

consciousness of citizenship. That free moral consciousness in a State of mixed religious constituency is prevented by the obedience demanded in the Roman Church to the Pope. The exclusive claims of that Church, the putative relation of its Supreme Pontiff to God as His Vicegerent, the obedience promulgated in the Constitution *Pastor Æternus*, all forbid. What other churches may promulgate as opinion the Roman Church can, in its own theory, promulgate only as Divine law. The former are teachers; the latter a sovereign. Outside of the Roman Church there is a tolerance based on the belief that what is true will be worked out as the result of contact and struggle with error; but within the Roman Church there prevails the belief that its truth must be protected from contact or struggle with what that Church determines *a priori* as error. Intolerance, therefore, is, abstractly and in objective truth, as necessary a principle to the Roman Church as tolerance is to the modern State. And this we think Dr. Pohle admits. "By theoretical dogmatic tolerance," he says, "is meant the tolerating of error as such, in so far as it is an error. . . ." [26] But what, we would ask, is error? Dr. Pohle does not expressly define it but he says:

"Just as vice possesses no real right to existence, whatever toleration may be shown to the vicious person, so also religious error can lay no just claim to forbearance and indulgence, even though the erring person may merit the greatest affection and esteem." [27]

[26] *C. E.*, vol. xiv, p. 763 d.
[27] *Ibid.*, vol. xiv, p. 764 a.

Clearly what Dr. Pohle means by "error" is any denial of truth as defined by the Roman Catholic Church. Such error can lay no just claim to forbearance and indulgence in Roman Catholic theory, because that which the Pope declares to be error *is* error. But in all other religions, and in the State, which have no office of infallibility or of moral supremacy, Dr. Pohle's claim that "religious error" can lay no claim to forbearance and indulgence would, if put into effect, produce anarchy.[28]

The State has no quarrel with the abstract view that religious error can lay no just claim to forbearance and indulgence, but it cannot surrender its authority to a church to determine for the State what is or is not such error, or so to determine for a solidarity within the State as a basis for political conduct.

Referring to theoretical dogmatic tolerance as "the outcome of an attitude which is indifferent to the right of truth, and which places truth and error on the same level," Dr. Pohle says:

"In philosophy this attitude is briefly termed scepticism, in the domain of religion, it develops into religious indifferentism which declares that all religions are equally true and good or equally false and bad. Such an internal and external indifference towards all religions, especially the Christian religion, is nothing

[28] Even a Court of last resort in the modern State, while it may be called "final," is not infallible. If such a Court promulgates what public opinion regards as error subsequent elections remove the judges and the promulgation is corrected by legislation—or revolution. See Hamilton's opinion in *The Federalist,* No. 28, p. 165; *vide supra* p. 39.

else than the expression of personal unbelief and lack of religious convictions." [29]

This conclusion may be true but, nevertheless, this indifferentism underlies the constitutional law of the modern State, which ignores the claims of a religious sovereignty by reducing all religions to indifference in the eyes of the law provided that standards resulting from the *free* exercise of the free moral consciousness of the People are complied with. The State could not object to any Roman Catholic doctrine in matters belonging to morals that is the result of the exercise of the free consciousness of its people, and not in conflict with communal standards of morality. It does object to a doctrine which is not the result of such free consciousness but of the promulgation of Papal sovereignty.

Dr. Pohle would compare religious with scientific truth:

"In the domain of science," [he says] "and of faith alike, truth is the standard, the aim, and the guide of all investigation; but love of truth and truthfulness forbid every honourable investigator to countenance error or falsehood."

Again:

". . . theoretical dogmatic intolerance . . . is claimed by every scholar, philosopher, theologian, artist, and statesman as an incontestable right, and is unhesitatingly accepted by everyone in daily intercourse." [30]

[29] *C. E.*, vol. xiv, pp. 763 d–764 a.
[30] *Ibid.*, p. 764 b.

Dr. Pohle overlooks the fact that nowhere in the domain of science is truth or error determined by a sovereignty vested in an individual by Divine right, and commanding obedience under the grave sanction of eternal damnation; also that scholars, philosophers, artists and statesmen not in religious allegiance to the Pope know no such sovereignty. Dr. Pohle's conclusion is:

"With the imperturbable conviction that she (the Roman Catholic Church) was founded by the God-Man Jesus Christ as the 'pillar and ground of the truth' (I. Tim., iii, 15) and endowed with full power to teach, to rule, and to sanctify, she regards dogmatic intolerance not alone as her incontestable right, but also as a sacred duty." [31]

This dogmatic utterance was commented upon by the Hon. Alfred E. Smith, in his article in the *Atlantic Monthly*,[32] as follows: ". . . the real meaning of these words is that for (Roman) Catholics alone the Church recognizes no deviation from complete acceptance of its dogma." In reply it is to be said that Governor Smith's interpretation might be correct were Dr. Pohle treating of *practical* dogmatic intolerance, but his subject is *theoretical* dogmatic intolerance. The following paragraph, in which we have italicized certain words, will be found in Dr. Pohle's text in connection with the above quotation. It clearly shows that the doctrine of theoretical dogmatic intolerance is not limited as Governor Smith asserts:

". . . As the true God can tolerate no strange gods,

[31] *C. E.*, vol. xiv, p. 766 a.
[32] May, 1927, p. 724.

the true (Roman Catholic) Church of Christ *can tolerate no strange Churches* beside herself, or, what amounts to the same, *she can recognize none as theoretically justified.* And it is just *in this exclusiveness that lies her unique strength,* the stirring power of her propaganda, the unfailing vigour of her progress. A strictly logical consequence of *this incontestable fundamental idea* is the ecclesiastical dogma that *outside the (Roman Catholic) Church there is no salvation (extra Ecclesiam nulla salus.) Scarcely any other article of faith gives such offence to non-Catholics and occasions so many misunderstandings* as this, owing to its supposed hardness and uncharitableness. *And yet this proposition is necessarily and indissolubly connected with the above-mentioned principle of the exclusive legitimacy of truth* and with the ethical commandment of love for the truth." [33]

[33] *C. E.,* vol. xiv, p. 766 a, b.

CHAPTER X

THE TWILIGHT ZONE OF CARDINAL GIBBONS

THERE is between the Roman Church and the State a field or territory wherein collision and conflict have often risen and may at any time rise.

In the Encyclical Letter *Immortale Dei*, Pope Leo XIII recognized the wide range of "matters of twofold jurisdiction," [1] and, commenting on that Encyclical, Dr. Ryan refers to the frequent disagreements between Church and State "concerning this borderland." [2] Cardinal Gibbons has given it the significant name of the Twilight Zone.

In a memorable magazine article [3] already referred to that eminent prelate wrote as follows:

"We may put aside, then, as an absurdity the injurious supposition that the Pope would ever interfere in purely civil affairs. But is there not a twilight zone over which both Church and State put forth claims? True; and I grant that here a collision of authorities comes more within the horizon of possibility. But the American concept of government and of liberty puts this hypothesis outside the range of practical affairs. That concept, as I understand it, is that the Government should leave as large a liberty as possible to indi-

[1] Appendix III, p. 317 *infra*.

[2] *The State and the Church*, p. 50.

[3] See article, "The Church and the Republic," in *North American Review*, March, 1909, pp. 321–336.

viduals and to bodies within the State, only intervening in the interests of morality, justice and the common weal. There are forces at work in the country, I know, that tend to paternalism and Cæsarism in Government; but true Americanism recognizes that these forces would bring disaster on American liberties. So long as these liberties, under which we have prospered, are preserved in their fulness, there is, I assert, no danger of a collision between the State and the (Roman) Catholic Church.

"The admission, however, of the merely theoretical possibility of such a collision keeps alive the apprehension of timid Protestants and is sufficient to determine some of them to deprive (Roman) Catholics forever of the honor of the Presidency."

All that the Cardinal of Baltimore said to his fellow citizens should be received with great respect. But he well knew when he referred to the absurdity of Papal interference in *purely civil affairs* that interference in such affairs is not anticipated by any one, and he knew equally well that his Church does assert the jurisdiction of the Pope as supreme, among Roman Catholics, in mixed matters, civic and moral, political and religious. When he said that the American concept of government left as large a liberty as possible to religious societies, the Government *only intervening in the interests of morality, justice and the common weal,* he knew that the doctrine of the supremacy of the Pope in matters belonging to morals was hopelessly in conflict with that American concept. If the State has the right so to intervene, the doctrine of the supremacy of the Pope in matters relating to morals is negatived.

The Cardinal also knew, as all men know, that if collision in his Twilight Zone was, as he said, theoretically possible, it was practically possible; for all history has demonstrated the possibility. Within its gloomy area have occurred those conflicts between the Latin Church and the State which have harassed the social life of man with hatred and his political life with violence, lighted the fires of martyrdom, sounded the tocsin of insurrection, initiated massacre, applied torture, established Inquisitions, made shambles of Privy Councils, despoiled the Church, betrayed the State, defied civil government, assassinated secular princes, murdered Christian prelates, mocked the laws of God and annulled the laws of nations. Had not the conflicting claims to sovereignty of the Roman Church and the State created Cardinal Gibbons' Twilight Zone, this dread record would never have been written. It will be said that it belongs to the past. But the conflicts of the Roman Church in 1870 with the Civic Primacy of the Italian People; later with the German Government in the *Kulturkampf;* more recently with France in the Association and Separation Laws; and now with Mexico, are not of a remote past. It is hardly possible, therefore, that we shall find a reduction of activity in the Twilight Zone, and some exploration of it would seem desirable in order to determine from present developments what may be expected in the future. In spite of the past there need be no hysterical alarm at phantoms of the Inquisition or echoes of rack and pin. The existing questions between civic communities and the Roman Church are modern questions and are to be settled by methods that are modern and not medieval.

If the modern State, as Cardinal Gibbons said, has the right to intervene in the interests of morality and the common weal, and if the Pope has, as the Roman Church claims, sovereignty over morals, all the conditions exist for the continuance of the ancient conflict. The State and the Roman Church would be today what the State and the Church were in the medieval theory: the two co-sovereignties or perfect societies dividing all jurisdiction over the human race between them, and quite unable today, as then, to determine the limit between their respective jurisdictions. Each claims now the authority to intervene in the interest of morality, and their intervention can result only in a conflict which, as heretofore, must be fought out with all the resources at the command of each contending power. As Pope Leo XIII said, in reference to such conflicts, ". . . the weaker power yields to the one which is stronger in human resources." [4] That stronger power has sometimes been the Church, as in the contest of Pope Gregory VII with the Emperor Henry IV,[5] or of Pope Innocent III with the Emperor Otto IV.[6] At other times it has been the State, as in the Treaty of Westphalia,[7] or in the triumph of a United Italy under King Victor Emmanuel II.[8]

The sovereignty of the modern State, for which we contend, in its very nature excludes *inherent rights* within it of a religious society. The State that concedes them surrenders its own sovereignty. Moreover, when

[4] *G. E. L.*, p. 122; appendix III, p. 318.
[5] Bryce, p. 160; *C. E.*, vol. vii, p. 231 a, b.
[6] Bryce, p. 207; *C. E.*, vol. xi, pp. 357–358.
[7] *Supra* p. 99.
[8] *Supra* p. 80.

the State has, as in the United States, guaranteed the equal rights of all religious societies, its concession of sovereign rights to one of such societies over other religious societies would violate the constitutional guarantees and lead at once to anarchy. When the constitutional order of the State establishes, for instance, the perfect equality of the Society of Friends and the "sovereign and ecumenical" Roman Catholic Church, it denies that in objective truth the one can have *rights* superior to the other. A recent champion of the Roman Church has appealed to the interest of the people of the United States in behalf of the Roman Church in Mexico because the people of Mexico, he says, have reduced the Roman Church to the status of other churches.[9] And Pope Leo XIII, as we have seen, complained of those who " . . . subject the (Roman Catholic) Church of God to the empire and sway of the State, like any voluntary association of citizens." [10] The issue between the Church of Rome and the modern State arises from the refusal of the State to regard that Church as having a status before the law differing in any way from that of any other religious society; whereas that Church claims in inherent right a superior and sovereign status and will naturally assert it when it can. This is the issue in Mexico.

The constitutional authority of the modern State over religious societies and corporations will, in its fundamental aspect, be found to be no less than its authority over other societies and corporations in respect to acts which, in the opinion of the State, menace

[9] *Infra,* p. 222.
[10] *Supra,* p. 96, note 17.

the interests of morality and the common weal. Of those acts the State must, in the modern theory, be sole judge. Thus all corporations, religious and secular, are subject to the sovereign power of the State, known as the Police Power, in virtue of which, nothwithstanding constitutional guarantees, the State may, when it deems necessary, qualify private rights to promote the general welfare, attain its constitutional ends, and prevent the impairment or destruction of its sovereignty. Thus the Police Power has been recently defined by the leading authority on the subject as the power in the State "of promoting the public welfare by restraining and regulating the use of liberty and property." [11]

The United States has demonstrated its full power to grapple with the claims of corporations that threaten the economic safety of the State. The enactment of the Sherman Anti-Trust Law by Congress in 1890, and the decisions of the United States Supreme Court applying that law in the Northern Securities case [12] and the Standard Oil case [13] were supported by the consideration of danger to the interests of the State from

[11] E. Freund, *The Police Power, Public Policy and Constitutional Rights,* preface, and sections 3 and 7.

"Every right acknowledged to the individual by the state may be abused by him to the detriment of the state. The state must therefore confer upon the government the power to *watch for and prevent* such abuse. This is the police power." J. W. Burgess, *Political Science and Comparative Constitutional Law,* vol. i, p. 216.

" . . . the power of the state, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the state, develop its resources, and add to its wealth and prosperity." Mr. Justice Field, Barbier *vs.* Connolly, 113 U. S. 31.

[12] United States *vs.* Northern Securities Co., 193 U. S. 197.

[13] Standard Oil Co. *vs.* United States, 221 U. S. 1.

those corporations in view of their power arising from their magnitude and the nature of their operations. Their dissolution was promptly decreed regardless of constitutional guarantees of liberty and property.

In cases where the use of property and liberty has become inimical to the economic or moral interests of the American State, the Police Power has been asserted, often with ruinous property losses and great personal hardship. This was true in the statutory regulation of railway rates,[14] and of grain elevator charges,[15] and in the prohibition of the manufacture of alcoholic beverages.[16]

The power exerted in these cases applies equally to religious corporations and to the use of religious or moral liberty, and to the use of the property of religious or ethical societies, contrary to the interests of the State, as the State may determine. The State will concede the right to individuals and to societies to profess, to practice and to administer doctrine, only so long as neither such doctrine nor its administration menaces the peace or safety of the State.

In the case of Chase *vs.* Cheney[17] the Supreme Court of Illinois said:

"We have no right and therefore will not exercise the power to dictate ecclesiastical law. . . . The church should guard its own fold; enact and construe its own laws; enforce its own discipline; and thus will be main-

[14] Ruggles *vs.* Ill., 108 U. S. 526.
[15] Munn *vs.* Ill., 94 U. S. 113.
[16] Mugler *vs.* Kans., 123 U. S. 623.
[17] 58 Ill., 509. The case arose out of the trial by a church tribunal of a clergyman charged with violating a law of the church.

tained the boundary between the temporal and spiritual power." [18]

But the Court added:

"The Constitution intended to guarantee, from all interference by the State, not only each man's religious faith, but his membership in the church, and the rites and discipline which might be adopted. The only exception to uncontrolled liberty is, that acts of licentiousness shall not be excused, and practices inconsistent with the peace and safety of the State, shall not be justified." [19]

The Supreme Court of the United States in the case of Watson *vs.* Jones,[20] referring to the decision in the case of Chase *vs.* Cheney, said:

"In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect." [21]

The Federal Supreme Court thus limited religious liberty, like the State Court of Illinois, to principles and doctrine consistent with the welfare of the State.

[18] *Ibid.*, p. 535.
[19] *Ibid.*, p. 537.
[20] 80 U. S. 679. The case arose out of an alleged diversion of trust property by a religious society.
[21] *Ibid.*, p. 728.

In the case of Gartin *vs.* Penick [22] the highest court of the State of Kentucky said:

"Civil government has no just or lawful power over the conscience, or faith or forms of worship, or church creeds or discipline, as long as their fruits neither unhinge civil supremacy, demoralize society, nor disturb its peace or security." [23]

It is evident from these opinions that there is a power in the State, constitutionally recognized, determining when religious doctrines and practices are licentious, or inconsistent with the peace and safety of the State, when they menace the public welfare, unhinge civil supremacy or demoralize society.

The right to teach the licentious doctrine of polygamy and to practise it, in virtue of an alleged Divine Revelation, was asserted by the Mormon Church under the constitutional guarantees of religious liberty.[24] The persistence of that Church in its doctrine and practices aroused the moral sentiment of the State against it, resulting in the enactment of an Act of Congress in 1887, in virtue of Congressional jurisdiction over the

[22] 68 Ky., 110. The case arose out of the conflicting claim to church property and rights owing to a schism caused by the slavery question.

[23] *Ibid.*, p. 117.

[24] The Late Corporation of the Church of Jesus Christ of Latter Day Saints *vs.* United States, 136 U. S. 1.

By a joint resolution of Congress the great properties of the Mormon Church, after the decree of dissolution, were devoted largely to the uses of the Mormon people, including poor relief, education, and the maintenance of schools, conditioned upon the abolition of the doctrine and practice of polygamy. Such application of property was carried out through trustees or receivers acting on behalf of the Government and under a supplemental decree entered in the Supreme Court of the United States. 150 U. S. 145.

Territory of Utah in which the properties of the Mormon Church were located, dissolving the Church corporation and sequestrating all its property. In the suit by the Mormon Church against the United States, the Supreme Court held the Congressional legislation constitutional.

"The State," [said the Court] "has a perfect right to prohibit polygamy and all other open offences against the enlightened sentiment of mankind notwithstanding the pretence of religious conviction by which they may be advocated and practiced."

The cases we have adverted to above, all rest on the principle affirmed by Cardinal Gibbons:

". . . the Government should leave as large a liberty as possible to individuals . . . only intervening in the interests of morality, justice and the common weal."

Such is the Police Power in the modern State. It is a power of sovereign nature and of paramount importance against that tyranny in majorities, and that intolerance in mass movements, which under the associative life in modern States threaten minorities, alike in economic, social, moral and political life. For life in the modern State consists in a ceaseless effort at an equilibrium among contending interests represented by groups or parties. A change in the numerical strength of any group or party may at any time destroy that equilibrium and affect adversely the constitutional rights of citizens, or even alter the constitution in harmony with the views of a political majority. The

system is intricate, the adjustment delicate, and most important in it is the Police Power. It is in virtue of that power that constitutional guarantees of liberty and property are restrained, that they may not be used to defeat those ends which the State exists to secure. Its exercise would seem to be nowhere more justified than in curbing the claims and restraining the acts of a sovereignty foreign to the State, when carried beyond the limits of public opinion, be such sovereignty secular or religious. Such sovereignty is no less obnoxious because its obedience is limited to a solidarity within the State in matters affecting interests that because they are moral are no less political.

The Police Power is *sui generis*, and has obviously a political as well as a legal relation. Its animating power is public opinion, and for that to function constitutionally it must be free. When it is divided between two sovereignties within the same State on questions that are both civic and moral, it is obvious that the Police Power on which the very life of the State depends is potentially nullified. From the time that the Civic Primacy of Peoples became the recognized authority of political life, and the attainment of religious and intellectual liberty the chief concern of government, the modern State has availed itself of the Police Power to curb, in the interest of its own safety, the abuse of liberty. Frequently the sovereignty of the Church of Rome has challenged the sovereignties of modern States, and demanded in virtue of its alleged Divine Constitution rights and privileges for itself which the State denied to other churches and religious societies. Such demands of the Church have threatened

the very existence of the State itself. Against them it has invoked the Police Power in drastic legislation that the Church of Rome has called "usurpation and revolution." [25] Where such legislation has not been formally enacted the inherent antagonism between the Roman Church and the modern State has been, and is, shown all over the world in the drawing of party lines in political life. The status claimed by that Church as a sovereignty, in nature like the State, is shown in the tension that develops between them where the Church numbers among its subjects a sufficient proportion of the State's electorate to affect the balance of power. It is the same tension that exists between two secular States standing at bay over a matter of disputed political right; on the one side the State resting on the Police Power and, on the other side, the Church of Rome resting on an alleged Divine Constitution and alleged rights of sovereignty, in its theory guaranteed by God Himself. Where such conditions exist it is true that many generations may go by without a disruptive collision between the "Two Powers," but nevertheless the existence of the tension develops within the Twilight Zone an endless antagonism destructive of religious peace and civic order. Four subjects throughout history have been the centers of activity within that Zone, and are especially noticeable today in Italy, in Mexico, in France, and in the United States. They are (1) the claim by the Roman Catholic

[25] Reference may be made to the laws of the kingdom of a United Italy as the result of which the Pope still insists that he is a prisoner in the Vatican; to the Laws of Separation and against Congregations in France, and to the recent church legislation in Mexico. To these further reference will be made in the following pages.

Church, in virtue of an alleged Divine Constitution, notwithstanding the sovereignty of the State, to possess inherent rights; (2) its claim to jurisdiction over marriage; (3) its claim to control over political conduct in matters belonging to morals; and (4) its claim to control over education.

CHAPTER XI

THE TWILIGHT ZONE OF INHERENT RIGHTS

The subject of inherent rights includes the claim of the Roman Church to be a legal or juristic personality in virtue of Divine Right, exclusive and unique, which the State in objective truth and duty should recognize as Divine and, therefore, as fundamental in the political order;[1] incidental to such juristic personality are the right of propaganda and the right to acquire property within the State. The claim to these rights means that, in the theory of the Church of Rome, its relations to and with the State are those of one sovereign power with another.

These rights which the Church of Rome claims as inherent, other associative bodies or corporations, religious as well as secular, acknowledge to be created by and received from the State. The Roman claims date far back in history, to the Imperial Edicts[2] of A. D. 313 and 321 when the Emperor Constantine after his conversion gave political recognition to the rights of the Church to propaganda and ownership of property with freedom of taxation. Prior to that time the Roman Empire would have laughed to scorn these claims of the

1 " . . . in principle, as a matter of objective duty, the State is bound to recognize the juridical rights of the (Roman) Church in all matters spiritual, whether purely so or of mixed character, and its judicial right to determine the character of matters of jurisdiction, in regard, namely, to their spiritual quality." *C. E.*, vol. xiv, p. 252 c.

2 *Ibid.*, vol. iv, p. 299 c; vol. xii, pp. 466, 467 d.

Roman Church which we are now considering.[3] Whether Constantine in his Imperial grant intended to recognize inherent rights, or to confer rights *de novo* upon the Church, is open to question. It was but natural that the Church should claim that the Imperial grants were given in recognition of inherent and sovereign rights (*dominium eminens*).[4] So recent an authority as Pope Pius IX has expressly taught that the Roman Church is endowed with proper and perpetual *rights* of her own, conferred upon her by her Divine Founder, and that it does not appertain to the civil power to "define what are the rights of the (Roman) Church, and the limits within which she may exercise those rights." [5] By proposition XXVI of the *Syllabus* [6] he condemned the claim that the Roman Church "has no innate and legitimate right of acquiring and possessing property." The *Catholic Encyclopedia* [7] affirms that all authorities within the Church

". . . show plainly that the principle of absolute ownership and free administration of ecclesiastical property has always been maintained . . . The (Roman) Church has proved that she takes for granted her dominion over the goods bestowed upon her by the charity of the faithful."

The properties of the Latin Church were, in theory, sacred things, and the sacred character once imparted

[3] *Supra,* p. 6, note 10.

[4] *C. E.,* vol. xii, p. 467 d.

[5] *Syllabus,* Proposition XIX, see appendix II, p. 295 *C. E.,* vol. xii, p. 466 c, citing Encyclical *Quanta Cura* of Pius IX; *Ibid.,* vol. iv, p. 50 c, citing the Bull *Clericis laicos* of Boniface VIII.

[6] Appendix II, p. 296.

[7] Vol. xii, p. 466 d.

to them remained perpetually attached to them by the law of Church [8] and State in the Middle Ages.

"It is to this inalienability of all the possessions of the (Roman) Church, which like the 'hand of a dead man' never loosens its grip of what it once has clutched, that the prejudice . . . against property held in 'mortmain' grew up in the thirteenth century." [9]

Thus the theory of the Roman Church requires immunity from interference by the State, both with the sources, the title and the disposition of its property.[10]

The result of this theory is to promote the accumulation of property. Furthermore, by the law of the Roman Church, each of the many institutions within it is the owner of the property with whose title it is vested, but always in subordination to the supreme jurisdiction of the Roman See. While the Roman See thus practically controls a specific property, the latter is not liable for the debts of the Church at large, but only for those of the subordinate corporation holding the title. If the subordinate corporation within the Church comes to an end, or revolts from its obedience, its property passes to the Church at large.[11] The accumulation of landed estates and wealth by the Roman Church has formed one of the great causes of conflict with the State. The avarice of the State has often played a part in this conflict; but the chief cause is to

[8] *C. E.*, vol. xii, p. 467 b.

[9] *Ibid.*, p. 471 a. "Mortmain, . . . dead-hand, or 'such a state of possession of land as makes it inalienable'. . . ." *Ibid.*, vol. x, p. 579 a.

[10] *Ibid.*, vol. xii, p. 469 c, d.

[11] *Ibid.*, p. 471 d.

be found in the acquisition by the Church of property which was, in the opinion of the State, out of all proportion to the services rendered by the Church, and destructive of economic equilibrium.

All the inherent claims and theories of the Church of Rome to juristic personality and to the rights of propaganda and property, as we have seen, are implicitly denied in the Constitution of the United States, and the law of American States gives to that Church only the same status that it gives to other religious corporations.[12]

No public question of the general limitation of the ownership of church property, or church exemption from taxation, has yet arisen in the United States. In the prodigious increase of national wealth and in the abundance of land, the perennial land question has not found a congenial ground. But the justification of freedom from taxation of the property of religious societies is already questioned and may at any time become a practical issue. In other countries exhaustive struggles have gone on between the Church of Rome and those whom its authorities designate as "the usurpers of church goods";[13] *e. g.*, the people of Italy,[14] Germany,[15] France,[16] and Mexico. Space permits only a brief reference to Mexico, and this not to cast judgment in the deplorable Church controversy

[12] Chapter X, p. 203.

[13] *C. E.*, vol. xii, p. 471 d.

[14] *Italy* (1870), see *C. E.*, vol. viii, p. 236 a.

[15] Germany, the *Kulturkampf* (1871–1891), see *C. E.*, vol. viii p. 703 d.

[16] France, the Associations and Separation Laws (1905–), see *C. E.*, vol. vi, pp. 184–186.

there, or to minimize the loss and suffering of the Roman Church, but to illustrate the logical results of its claims and doctrines. The Mexican situation is typical of the conflicts that may arise between the Roman Church and the modern State where the constitutional and inherent claims of that Church have been given recognition in the social and political development of the State. In Mexico the Roman Church has had as free a hand as a human institution could have in such social and political development. It came to Mexico with the support of the Government of Spain. It has been for much of the time since its arrival there, four centuries ago, the State Church of Mexico. It maintained the Spanish Inquisition until 1813. Its authorities admit that its wealth is large. Out of the population of some 15,200,000 it is said Roman Catholics number 15,000,000.[17] Undoubtedly unscrupulous politicians in Mexico have preyed upon the Roman Church, frequently interfered with its plans and despoiled its possessions. With such evils religion must of necessity contend. In view of all this it is difficult to see what factor in the Mexican situation has morally a greater responsibility for the moral standards of the Mexican people than the Church of Rome. That Church has been from the beginning the undisputed custodian of the religious interests of the Mexican people. If, as the Church says, the sovereignty of that people is destroying religion and Mexican society is marching back to paganism, what but the Church of Rome is responsible? By its own admission ninety-five per cent. of the Mexican people claiming any religion are Roman Catholics. Yet today that

[17] *Supra*, p. 92, note 13.

Church has suspended or withdrawn its religious ministrations from the Mexican people. It now imposes upon Mexico that strange remedy which it has imposed so often in periods of discord and civil and religious confusion when its putative sovereign rights have been denied by the State— the interdict, whereby its people are deprived of the Sacraments.[18] And the reason given for the imposition of this dread penalty is that the State of Mexico refuses to acknowledge the juristic personality, freedom of propaganda and rights of property of that Church.[19] Souls are to be lost and the interests of religion are to be further disparaged because two sovereignties, the State and the Roman Church, are locked again in their age-long struggle!

The Mexican people know that the records of the Papal chancery repudiate the sovereignty of the Mexican State. The Mexican Government knows that in the Supreme Pontiff it deals with one whose predecessor expressly asserted the supremacy of the Roman Church over the Mexican State; also with a sovereignty which claims unqualified obedience from over ninety-five per cent. of the population of the State, in matters belonging to morals and matters relating to the government of the Church. The Twilight Zone in Mexico has ceased to be a "theoretical possibility": it has become a reality through a course of events that is easy to trace.

Among the evils inflicted by the Roman Church on that Republic prior to 1855 was an ancient one known as "benefit of clergy," whereby priests (and even those

[18] *C. E.*, vol. viii, p. 73 b.

[19] In reference to these statements concerning the situation in Mexico, *vide infra*, p. 219, notes 24, 25; and also *supra* p. 92, note 13.

in minor orders, deacons, etc.) could, in case of civil or criminal offences, be tried, not by the State, but by the Church. This exemption of the clergy from the ordinary judicial process of the State and from trial in the State courts, was a relic of the Middle Ages, and an evil in political life so well recognized that in the modern State it has been quite universally abolished.[20] "'Benefit of clergy' was the curse of Mexico," and on 23 November, 1855, that country enacted a law abolishing it. The Church was roused to resistance. The Goverment suppressed a clerical insurrection in Puebla in March, 1856, and confiscated a considerable amount of Church property. Later it enacted a law releasing Church land from mortmain.[21] Pope Pius IX on 15 December, 1856, delivered the following Allocution:

"From these lamentable facts, which we have recounted with sorrow, you plainly perceive, Venerable Brethren, in what way our most holy religion has been despoiled and humiliated by the Mexican government, and what great injuries have been inflicted upon the Catholic clergy, its sacred laws, ministers, pastors, and against our supreme authority as well as that of the Holy See. Be it far from us, amid the great confusion in sacred affairs, the oppression of the Church, its authority and liberty, ever to neglect the discharge of our apostolic office! Therefore, in order that the faithful in that country (Mexico) should know and the whole Catholic world should learn that we do earnestly condemn all these wrongs perpetrated by the

[20] *C. E.*, vol. ii, pp. 476 d–477 a. Benefit of clergy was abolished in England in 1827, and in the United States in the Federal Courts in 1790. *Ibid.*, p. 477 b.

[21] *E. B.*, vol. xviii, p. 341 a.

leaders of the Mexican Republic against the Catholic religion, its clergy, sacred ministers, pastors, laws, rights, properties, and against the authority of this Holy See, we raise with apostolic liberty our pontifical voice in this most illustrious assembly; we condemn, we reject, we declare absolutely void and of no effect all the aforesaid decrees and other measures enacted there by the civil power in such contempt of the ecclesiastical authority of this Holy See, and to such great damage and to such detriment of religion, the holy bishops and other ecclesiastics. Moreover, we most seriously warn those by whose cooperation, counsel, and order such acts have been committed, to bear in mind the penalties and censures which have been established by the apostolic constitutions and the holy canons of councils, against the violators and profaners of sacred persons and things, against ecclesiastical liberty and authority and against the usurpers of the rights of this Holy See." [22]

The present controversy in Mexico arises from the enactment and enforcement of laws asserting the sovereignty of Mexico over that claimed by the Church of Rome, and in this controversy Mexico remembers that less than seventy-five years ago the Supreme Pontiff of the Church asserted the right to annul her laws.

The recent *Pastoral Letter* [23] *of the* (Roman) *Catholic Episcopate of the United States on the Religious*

[22] Raulx, *Encyclique et Documents,* vol. i, pp. 396–397. Pope Pius IX also declared the laws of Austria null and void and adjured all who dared to obey them to remember the censures and spiritual penalties incurred by those who violate the rights of the Church. Janus, p. 28.

[23] Published by the Committee of the American Episcopate, dated 12 December, 1926.

Situation in Mexico, shows that considerable property had been acquired by the Church in Mexico and devoted to its religious and educational purposes. The value of the property is not stated, and it is not essential here as it is conceded in the Pastoral Letter that it was substantial.[24] Mexico, by its Constitution and laws, has now reasserted the right to control the property rights of the Roman Church. It has doubtless asserted the right very unwisely and carried it out with unnecessary hardship,[25] but that does not militate against the right of the people of Mexico to determine by their constitutional law how much property (if any) churches may hold, with due regard to the moral and economic questions involved. Their determination may be unwise but in the nature of things it cannot be unlawful, unless the Roman Church possesses inherent rights which, in objective truth, are superior to the sovereign rights of the Mexican people. The claim of the existence of such rights in the Roman Church is the real cause of the existing controversy in Mexico.

[24] The Pastoral Letter makes no statement of the present wealth of the Roman Church in Mexico, but it would seem from the figures given (pp. 20–22 and note 38) that in the nineteenth century it had reached a value of at least $116,405,074. The report further states that "the highest estimate of the wealth of the (Roman) Church in Mexico ever offered even by her enemies was $250,000,000. . . ."

[25] The measures thus far used by Mexico contrast very unfavorably with those used by the United States of America in dealing with the Mormon Church, which, while it deprived the Mormon Church of all its property, magnanimously administered the property, through receivers or trustees appointed by the United States, for the benefit of the poor and the charities of the Mormon people, and even for schools and religious purposes, provided and on condition that its characteristic religious doctrine was not practiced or inculcated (*supra,* p. 206 n. 24). The incident illustrates the difference with which two peoples with different religious and racial antecedents will deal with similar problems.

Mr. William D. Guthrie, in the opinion rendered by him as counsel to the Roman Catholic Hierarchy of America on the Mexican situation,[26] held that the Roman Catholic Church was not legally subject to Article 130 of the present Mexican Constitution, which provides that "the law recognizes no juridical [*i. e.*, juristic] personality in the religious institutions known as churches." "This denial to the Roman Catholic Church," says Mr. Guthrie, "of juristic entity or personality violates international law among all civilized nations under principles of universal acceptance 'both in the law of Continental Europe and in the common law of England,' . . ."

Such opinion obviously claims for the Roman Church an inherent status superior to all other religious bodies, and inherent rights superior to the sovereignty of every State. If the opinion is correct then the constitutional principles and guarantees of religious liberty in the Constitution of the United States must give way before the Divine and inherent rights of the Church of Rome.

Mr. Guthrie further said:

". . . no such scheme as the present attempt of

[26] This opinion was printed in full in the *New York Times*, December 5, 1926, p. 1. Its publication was prefaced with a statement in part as follows: "Mr. Guthrie, a (Roman) Catholic, President of the Association of the Bar of New York City and former President of the New York State Bar Association, was asked to prepare the opinion by Cardinal Hayes, Chairman of a Committee of the Hierarchy of the United States on the Mexican Situation. This is a Committee appointed last September at the annual meeting of the Archbishops and Bishops of the United States at Washington to prepare a pastoral informing the people of the United States of the Roman Catholic Church's side of the Mexican controversy."

Mexican politicians to establish a Mexican national church and a scission from due church government under the Roman Catholic Church could be acquiesced in without inevitably leading to separation from Rome and the establishment of a so-called Mexican National Catholic Church without any true or proper Catholic government thereof. This is necessarily in clear conflict with the basic doctrine of the Roman Catholic Church and the deep belief of her members that she is ecumenical and universal in the very sense and scope of the belief that all peoples ought to worship one and the same God, and that their Church was founded by Christ, true God and true Man, for the governance of the spiritual life of all men living under the skies, irrespective of nationality and irrespective of origin, class or condition in life, even of servitude." [27]

The Pastoral Letter asserts that the Church of Rome in its trouble in Mexico turns to prayer and not to arms; nevertheless, it reasserts its supreme claims in Divine right which are at the root of the great conflict between it and Mexico, for it declares the conflict in Mexico to be:

[27] *New York Times,* December 5, 1926, p. 6, col. 3. It is claimed in the opinion that the United States Supreme Court in the case of the City of Ponce *vs.* the Roman Catholic Church (210 U. S. 296) decided in favor of the inherent rights of the Roman Church as superior to the State. An examination of the decision shows that the case involved the title of the Church to land in the City of Ponce in Porto Rico. The rights of the Church had been acquired under the fundamental law of Porto Rico, and had been guaranteed by the United States in and by the Treaty of Paris. In other words, the constitutional law of Porto Rico expressly recognized the rights and title of the Church to the land in question. In the Mexican situation the case is the reverse: the constitutional law of Mexico denies the right and title of the Roman Church. The case is, therefore, without authority in relation to the point it is cited to support.

". . . an attempt at nothing less than the destruction of the Divine Constitution of the (Roman) Church by reducing her to the status of a state-controlled schismatical body, without the right to form, train and educate her own clergy, to have a sufficient number of them for the care of souls, to find means for her support, to develop works in accord with her mission of charity and enlightenment, and to apply the teachings of the Gospel to the formation of a public conscience." [28]

In these words it will be observed that the claims of inherent juristic personality, of inherent right of propaganda and of property, are clearly asserted, and the area of Cardinal Gibbons' Twilight Zone is not reduced or its shadows in any wise relieved.

[28] Pastoral Letter, p. 3.

CHAPTER XII

THE TWILIGHT ZONE OF MARRIAGE

WHATEVER may be the law of marriage, as taught by Christ, the modern State in its non-Christian development does not accept that law as obligatory, but enacts a marriage law of its own determined by the consensus of its citizens. The Christian churches claim that the marriage law as taught by Christ is obligatory upon them, but they differ in their interpretation of the law. Between the State and the churches the chief point of difference is over the indissolubility of marriage, and in respect to this some of the churches are recreant to the law of Christ and are as lax as the State.[1]

It is of common agreement that marriage is a matter of peculiar cognizance in law, both ecclesiastical and civil, that the contract is *sui generis*, and that there is a distinction between the contract and the status or

1 " . . . Theoretically at least the Roman Church has consistently adhered to Christ's teaching. But in practice the technicalities of dispensations, nullities and the like have frequently been used to justify exceptions. The Church of England is clearly sound in its doctrine and Canon Law. . . . To-day that Church, because of its connection with the state, has very grave difficulty in maintaining the integrity of its matrimonial discipline in the face of recent divorce legislation. The American (Episcopal) Church, like the English, inherited the Western Canon Law, which forbids the remarriage of a divorcee while the other party lives. But in 1868 the General Convention enacted a canon in which it was provided that such prohibition 'shall not be held to apply to the innocent party in a divorce for the cause of adultery.' . . . Inevitably the lax ideas of American society at large infect the minds of many Churchmen." F. J. Hall, *Dogmatic Theology*, vol. ix, (The Sacraments), pp. 277–278.

bond in which the contract results. The contract is the consent or agreement of the parties evidenced by prescribed formalities, and followed by cohabitation, a physical feature, which is essential to the completion of the contract. The contract being thus executed, the status or bond is established.

Neither over the contract nor the status of marriage could there be any conflict of jurisdiction between State and Church, prior to the Reformation, for, as has been pointed out,[2] they were then substantially one. Marriage was unanimously confided to the jurisdiction of the Church. With the Reformation came the subdivision of the one State into many states and the one Church into many churches. There was no longer a Universal Church to which the State could concede jurisdiction over marriage. The only course open to the State was to assume jurisdiction itself sufficient to permit it to determine whether or not the status or bond of marriage existed. A large number of its people rejected the Christian theory of the indissolubility of marriage, and with it even its sanctity. Others held to the Christian theory and elevated marriage not only to sanctity but declared it to be, as between Christians, a sacrament. The State has established the minimum requirements of the marriage relation; the churches the maximum. The State so far has not imposed its minimum requirements to the exclusion of the churches' maximum requirements. Should it do so, the rights of Christians would seem adequately protected by their revolt in the exercise of freedom of conscience. The churches have been left free to administer church law,

[2] *Supra,* p. 21–25.

in respect to marriage, through the consciences of their members and through the conditions of church membership and discipline. To teach that marriage is a sacrament in addition to a contractual relation would harmonize with the law of the State, but the doctrine of the Church of Rome is that marriage between Christians becomes a sacrament, into which contract and status are merged, and over which the State can have no jurisdiction, although some of the civil incidents attaching by reason of State law may remain. Among baptized persons the State, in Roman Catholic doctrine, ". . . has no right either to declare valid a marriage that is null in the eyes of the (Roman) Church, or to pronounce null a marriage that is really valid." [3] The concrete result of this is that the Church of Rome and the State each claim a sovereign right to determine when two baptized persons are man and wife. The State by divorce, under certain conditions, assumes the right to terminate a marriage admittedly valid by its law, and the Roman Church by annulment, under certain conditions, assumes the right to determine that no marriage whatever has taken place. The State breaks the marriage bond; the Roman Church declares that no marriage bond has existed. In each case the union is dissolved. In the theory of the State, the Roman Church has no original and inherent jurisdiction over marriage to the exclusion of the State. In the theory of the Roman Church the State has no jurisdiction whatever over the bond of marriage between baptized persons; that jurisdiction belonging exclusively to the Roman Church. The antagonism is obvious.

[3] *Manual of Christian Doctrine,* p. 494. "The civil power has no

The revision of the Code of Canon Law by the Roman Church in 1918 gave a final expression to its doctrine of marriage. Dr. Woywod in his *Commentary on the Code* states that

". . . there can be no valid matrimonial contract between baptized persons which is not also necessarily a sacrament (Canon 1012).[4]

"Baptized persons" include Roman Catholics and all others who have been "validly" baptized according to the Roman Catholic doctrine of "valid" baptism.

"The great mass of Christians," [he says] "separated from the (Roman) Catholic Church do not admit the teaching of the (Roman) Church as to the sacramental character of marriage. There is a reason for this attitude," he continues, "for, *if they admitted the teaching that marriage is a sacrament, they would have to admit the necessary and logical conclusion that the (Roman) Church alone, to the exclusion of all secular powers, has jurisdiction over the marriage contract of Christians.*" [5]

authority over the bond itself or what is essential to it, and can establish no real impediment, diriment or impedient, to the marriage of Christians. It has authority over the civil effects." (Ayrinhac, *Marriage Legislation in the new Code of Canon Law,* p. 30). "The (Roman) Church claims full, independent and exclusive power over the marriage of all baptized persons—(Roman) Catholics, heretics, schismatics— . . . That power is exclusive . . . It includes the legislative, judicial, and coercive power; that is, the power of establishing impediments both diriment and impedient, of deciding all matrimonial causes, of constraining married persons to comply with their obligations, etc." (*Ibid.,* p. 29). *Cf.* Petrovits, *The New Church Law on Matrimony,* §§ 6, 9, 13, 16.

[4] Woywod, vol. i, p. 559.

[5] *Ibid.,* p. 560.

We quote further from Dr. Woywod:

"The marriage of baptized persons is governed not only by the Divine, but also by Canon Law. The civil power is competent only to legislate concerning mere civil effects of such marriages (Canon 1016)."

"The (Roman) Church claims exclusive jurisdiction over the marriage contract and marital state of Christians in all matters that concern their validity and liceity. . . . As the civil governments of today do not, as a rule, admit the right of the (Roman) Church to regulate the marriage contract and marital state by her laws, and they legislate on marriage independently of the (Roman) Church, *there is thus a conflict between the two sets of laws.* . . ."

"Marriage between unbaptized persons is subject to the civil power, and in the case of these marriages the civil law has the right to determine the conditions of the validity as well as the liceity of these marriage contracts. However, the civil power is bound to respect the divine (Roman Catholic) law on marriage, and all civil laws which contradict the divine (Roman Catholic) law are necessarily null and void." [6]

"Those marriages only are valid which are contracted either before a pastor or the local Ordinary or a priest delegated by either and at least two witnesses . . ." [7]

[6] *Ibid.*, p. 563.

[7] *Ibid.*, p. 664 (Canon 1094). The deduction seems to be that in Roman Catholic doctrine all Christians who are baptized in Trinitarian baptism, Protestants as well as Roman Catholics, when they marry enter into a marriage contract whereby (*eo ipso*) they receive the sacrament of marriage (if such be their intent). Within these limits the marriages of Protestants, in Roman Catholic doc-

(There are certain exceptions, *e. g.*, where there is danger of death, or a priest cannot be had for a month, when the marriage can be contracted in the presence of witnesses without a priest).

In that recent pontificate of many woes, in which Pope Pius IX assumed to settle the conflicting claims of the Roman Church and the modern State, he expressly condemned theories, in respect to marriage between baptized persons, which might give to the State some claim of jurisdiction or allow of a certain secular status or bond of marriage existing apart from the sacrament.[8] He declared by proposition LXVI of his *Syllabus* that it is false that "the Sacrament of Marriage is only a something accessory to the contract and separate from it, and the sacrament itself consists in the nuptial benediction alone." [9]

Quite in harmony with the *Syllabus* of Pope Pius IX, Pope Leo XIII in 1880 declared as follows:

"Let no one then be deceived by the distinction which some court legists have so strongly insisted upon—the

trine, are sacraments. As sacraments in Roman Catholic theory they are wholly removed from the civil jurisdiction of the State to the ecclesiastical jurisdiction of the Roman Church. The fact that the Protestants in question repudiate this theoretical transfer of jurisdiction over their marriages does not affect the Roman Catholic theory and the Roman Catholic claim. It is true that Canon 1094 provides that marriages are "valid" only when contracted before a Roman Catholic priest, but Canon 1099 (Woywod, vol. i, p. 688) expressly provides by section 2 that non-(Roman) Catholics (if they marry among themselves) are not subject to the requirements of Canon 1094. If validly baptized their marriages are valid in Roman Catholic theory and, with due intent on their part, are sacraments.

[8] *C. E.*, vol. ix, p. 712 a.

[9] See appendix II p. 301.

distinction, namely, by virtue of which they sever the matrimonial contract from the sacrament, with intent to hand over the contract to the power and will of the rulers of the State, while reserving questions concerning the sacrament to the (Roman) Church. A distinction, or rather severance, of this kind cannot be approved; for certain it is that in Christian marriage the contract is inseparable from the sacrament; and that, for this reason, the contract cannot be true and legitimate without being a sacrament as well." [10]

According to the *Catholic Encyclopedia* [11] opinions advanced within the Roman Church in order to supply a juridical basis for civil legislation regarding marriage between baptized persons have been condemned by the Roman See. The antagonism between the State and that Church in respect to the marriage question thus becomes very acute. The assertions by the Roman Church of jurisdiction over marriage are made tolerable at present only by the consideration that if they reach a point where they become, *in the opinion of the State*, inconsistent with its peace and safety, or in conflict with the interests of morality and the common weal, as determined in the moral consciousness of the civic community of the State, the State has the constitutional power to intervene. The jurisdiction of the Church must yield to the Police Power of the State notwithstanding the guarantees of religious liberty. This, as a conclusion of law, is sustained by the decision in the case of the Mormon Church.[12] If a church or any other society, an

[10] *G. E. L.*, pp. 70–71.
[11] Vol. ix, p. 712 a.
[12] *Supra* pp. 206–207.

educational association, a business corporation or a labor union, has the sovereign right to publish its decrees pronouncing a contract or a status void which the State declares valid, and over which it is essential that the State should have jurisdiction so far as the interests of civic order require, State nullification to that extent is accomplished. The plea of necessity under a putative Divine Revelation did not avail the Mormon Church, and in the modern State all religions are equal before the law.

A very significant fact, which cannot be overlooked in connection with the Roman Catholic doctrine of marriage, is that the doctrine supports the claim of the *sovereignty* of the Church, in virtue of which it assumes, by ecclesiastical legislation, to impose restrictions and grant relief in respect to the marriage of all baptized persons, whether its members or not. In theory it still maintains that great system of dispensations, annulments and matrimonial decrees by which the social and political power of the medieval Church was largely supported and its coffers replenished. The prohibited degrees of consanguinity and affinity [13] made void or

[13] Consanguinity means blood-relationship; affinity means the theoretical relationship which arises between each of them and the other's relatives to the fourth degree where a man and a woman have carnal intercourse sufficient to beget children. (See *C. E.*, vol. i, p. 178 a.) For a long time affinity begat affinity and all the relatives of the one were forbidden to intermarry with the relatives of the other to the fourth degree. In case of consanguinity marriage was forbidden to the seventh degree. Thus the marriages of all persons descended from the same great-great-great-great-great-grandfather (whether the parties were cognizant of the relationship or not) were voidable unless dispensations could be obtained from the Pope. In 1215 the number of the degrees was reduced to four, and further reductions both in consanguinity and affinity have since been made. Lawful as well as unlawful intercourse established these relation-

voidable all marriages within these degrees excepting so far as dispensations from the Pope might release victims from their entanglements. The intent of the prohibited degrees was alleged to be the elevation of family life and the improvement of the human race through the marriage of strangers in blood. Be that as it may, the effect was to give the Pope a vast power over the determination of the validity of marriage. Because validity determined inheritable blood on which nearly every right and privilege depended, the Pope became supreme arbiter over a vast range of private and public rights, from that of the peasant to plough his field to that of the prince to rule his kingdom. A widespread reticulation enmeshed the social, political and religious life of the Christian world, drawing into its tangles property rights and kingdoms, the legitimacy and illegitimacy of children, the fair name of women and the honor of men—all that was most sacred in human life—to be redeemed by dispensations which only the putative Vicars of Christ could grant.

A great Roman Catholic historian has recited the use of dispensations by a single Pope in the political life of Europe in the pontificate of Alexander VI (1492–1503):

"Marriage dispensations became, by careful management, productive sources of revenue and of political influence. Charles VIII. wished to marry the betrothed bride of the King of the Romans, and the Pope was

ships. So likewise did spiritual relationships such as god-parent, etc. Ignorance was no excuse. (*C. E.*, vol. i. pp. 178–179; vol. iv, pp. 264–268; Woywod, vol. i, pp. 636–648; R. H. Charles, *Divorce and the Roman Dogma of Nullity*, pp. 70–94.)

solicited on either side to permit or to prevent the match. He informed Valori that he meant to decide in favour of France, as the stronger and more useful power. But he said the thing was too scandalous to be done publicly, and afterwards spoke of the marriage as invalid. Divorce served him better even than dispensations. Lewis XII. wished to marry the widow of his predecessor, whose dower was the duchy of Brittany. He was already married; but Cæsar (the Pope's son) was despatched to France with the permission for the king to put away his wife. He was rewarded by a French principality, a French wife, and a French army wherewith to conquer Romagna. Ladislaus of Hungary desired to put away his wife, the widow of Mathias Corvinus. The Pope gave him leave, and earned 25,000 ducats by the transaction. He twice dissolved the marriage of Lucretia (his own daughter). The King of Poland had married a princess of the Greek Church, and had bound himself by oath not to compel her to change her religion. The Pope informed him that the oath was illegal, and not only absolved him from it, but required that compulsion should be used, if necessary, in order to convert her. But if neither ecclesiastical nor secular weapons should avail to subdue her obstinacy, then he commanded that she should be punished by having her goods confiscated, and by being turned out of her husband's house." [14]

The State under the present democratic dispensation has imitated the Church and has developed for itself a still more iniquitous system of dispensations, annulments and matrimonial decrees. Matrimonial favors, with which the Latin Church has always favored the

[14] Acton, *Historical Essays and Studies,* pp. 76–77.

lords of power and wealth, the modern State, with reckless profligacy, bestows on humble men, and the matrimonial dilemmas on Main Street today are adjusted as readily by the State as they were in the days of old at St. Denis or Hampton Court by the Popes. The State has adopted the remedy of divorce for the hardships of the indissoluble theory of marriage; the Roman Church holds to the ancient remedy of annulment. The application of each remedy by its respective patron has been attended by depressing effects on marriage and with sad results in the moral life of man.

The doctrine that the status of marriage among baptized persons is a sacrament, and that the marriage status of all others is of an inferior order in the sight of God, has necessarily a disparaging effect on the general moral status of marriage. It is true that some Roman Catholic theologians have striven to minimize this effect by explaining that in any event a "certain sacredness" is allowed in Roman theory to the marriage status of non-Christians. Pope Leo XIII so taught in his Encyclical on Christian Marriage.[15] Even in Pope Leo's concession there is an invidious discrimination, and his predecessor, Pope Pius IX, in his Allocution, September 27, 1852, expressed it in no uncertain words, declaring that even the marriages of Christians solemnized by the civil law are nothing else than a shameful and abominable concubinage,[16] and in his letter to King

[15] *G. E. L.*, p. 68.

[16] "But who does not know or who can be ignorant among (Roman) Catholics that marriage is veritably and properly one of the seven sacraments of the evangelical law instituted by our Savior Jesus Christ; and that there cannot be among the faithful (*fideles*) any marriage which is not at the same time a sacrament; and that

Victor Emmanuel, 9 September, 1852, he declared marriage between "Christians" without the sacrament a pure concubinage.[17]

By Proposition LXXIII of the *Syllabus* he expressly taught that the marriage contract between Christians is no contract if the sacrament be excluded, and that a real marriage cannot exist between Christians in force of a merely civil contract.[18] The result of this doctrine goes very far when it is remembered that marriages solemnized by any officiant other than a Roman Catholic priest, *e. g.*, by any Protestant minister, are in Roman theory solemnized by the civil law.[19] The conclusion forces itself that, in the opinion of Pope Pius, the marriages of all Christians, existing in force of a civil contract, are "a shameful and abominable concubinage." Yet such Christians as are Protestants cannot attain to marriage except in virtue of what Pope Pius regarded as a civil contract.

It would seem that the interests of morality were better served by a doctrine which left the integrity of the marriage status unimpugned in theory, and the jurisdiction of the State respected, though the doctrine added the element of the sacrament on the religious side as essential among Christians. Neither in Romanism nor in Protestantism has an inherent sanctity of marriage been upheld, for Pius IX conditioned its

between Christians (*Christianos*) the union of a man and a woman without the sacrament, whatever the formalities civil and legal may be, cannot be else than a shameful and abominable concubinage utterly condemned by the (Roman) Church." See Raulx, *Encyclique et Documents*, vol. i, pp. 301–302.

[17] *Ibid.*, vol. i, pp. 273–274.

[18] Appendix II, p. 302.

[19] Woywod, vol. i, pp. 685–686.

realization on the acceptance of his jurisdiction; Martin Luther has declared the sacramental tradition of matrimony a jest,[20] and John Calvin that it is no more a sacrament than shoemaking or hair-cutting.[21]

In addition to the demoralizing effect of Roman Catholic theory there is a demoralizing effect in practice. In the application of its law and theory the Church comes into conflict with the laws and principles of the State designed to protect the moral *integrity of all contracts including that of marriage.* The Ten Commandments prohibit sins other than adultery. Among the sins which derange the moral order of life fraud plays a conspicuous part. It is against fraud that the State, in furtherance of the moral integrity of contracts, has established the principles and laws to which we refer. The Roman Church, while asserting jurisdiction over marriage and maintaining a legalistic regularity, discards in the administration of its marriage law the moral principles and legal rules established by the State for the control of fraud.

Thus, in the late Marconi case it appears that the ground for annulment of the marriage was that the parties, who it is understood were not Roman Catholics and had been married in 1905 in the Anglican Church, agreed before the marriage that they would secure a separation afterward if they came to regard it as desirable. In 1918 difficulties arose and they separated. In 1924 a civil divorce was secured. In 1926 they applied to the authorities of the Roman Catholic

[20] Luther, *De Captivitate Babylonica,* (in the chapter *De Matrimonio*).

[21] Calvin, *Institutes,* IV, xix, 34.

Church for an annulment of the original marriage in order to regularize their remarriages in accordance with Roman Catholic doctrine. In 1927 the annulment was granted because of the pre-nuptial agreement for separation.[22] The parties subsequently contracted new marriages.

It is part of the law of contractual relations universally observed by States that in the making of contracts, where the rights of others or where public interests are involved, a private arrangement previously made between the parties in anticipation of the contract and calculated to nullify it, cannot relieve the parties of its unpleasant consequences. It is clear that for the law to provide otherwise would promote fraud. It is clear that the doctrine of the Roman Church which was applied in the Marconi case, makes it quite possible for parties to a marriage contract (by an arrangement between them before marriage) to command its voidability by that Church. It is obvious that no human power can detect the fraudulent character of such an arrangement. At the same time no human judgment can fail to detect the immoral effect on the status of marriage of laws that make such an arrangement due cause for escaping the consequences of the union if uncongeniality develops. The institution of companionate marriage, which religion with much denunciation now ascribes to the State, seems to be enjoyed without censures or penalties from Rome by those who are adroit enough to use the marriage machinery of

[22] The facts are taken from the daily press, specifically the *New York Times* of May 6 and June 13, 1927. No difference as to the facts has appeared.

both the State and the Roman Church in a combination for marital relief.

Similar considerations arise in the case of the annulment of the marriage between the Duke and Duchess of Marlborough. The marriage was that of two members of the Episcopal Church, solemnized within the sovereignty of the State of New York by ecclesiastics of that Church. The parties took up their residence within the sovereignty of England. Twenty-five years after the marriage, and after the birth of two children, the wife, disregarding the remedy of annulment provided by the law of England and by the law of New York, sued the husband for divorce in the English Courts, on the grounds of his gross misconduct. The divorce was granted. After the divorce each party entered into a marital arrangement with a new partner. The wife's new partner being a Roman Catholic, an annulment of her original marriage became manifestly desirable in spite of the English divorce, because, while that *divorce* dissolved the marriage and permitted remarriage in the jurisdiction of the State, the Roman Church required *annulment* by its authorities in order to permit of remarriage according to Roman Catholic doctrine. Six years after the English divorce was granted she applied to the Roman Catholic Courts for an annulment. It will be noticed that for twenty-five years before the English divorce was granted the parties had proceeded in a course of life based on the assumption that the marriage was valid. In the jurisprudence of every civilized country the wife would have been estopped from obtaining an annulment because of letters (of record in the English divorce Court) written

to her husband (who had separated himself from her) expressly begging him to return, and because of the great lapse of time. Conclusive presumptions would have been established against fraud, in the interests of social morality and of the general law governing the sanctity of contracts. But the wife applied to the Courts of the Roman Catholic Church, in whose law no such embarrassing presumptions were tolerated. She asked for annulment upon the theory that she had been under fear and duress at the time of the marriage, and that her subsequent acts and the great lapse of time were not a ratification of the marriage because she had not known in all that time that such fear, if it existed, established her claim in the Roman Catholic Courts to an annulment. Shortly after the granting of the annulment the ex-husband, representing one of the great Dukedoms of England, was received into the Roman Catholic Church.

According to the law of the Roman Catholic Church the right to annulment of the marriage by the Church, in view of the great delay, existed only if the wife had been ignorant during that time that the Roman Church claimed the right to annul the marriage under the circumstances. The fact that she had been ignorant was testified to by the wife herself, but she was an interested witness, the most interested person in the case. But more than this, it was very clear that she had had the means of knowing. Under the advice of able counsel she had chosen the remedy of divorce in the English Courts, where annulment was equally available. For thirty-one years she had been a woman moving freely in the highest circles of life, a peeress of the realm, possessed of an ample fortune, and for some years liv-

ing in marital freedom apart from her husband. Thus there was every presumption that the means of knowing were for many years at her command. The law of states quite universally provides that in such a case the possession of the means of knowing is equivalent to knowing; and nothing is more obvious than the necessity of such a law to prevent fraud in contractual relations. But in the Marlborough case, as in the Marconi case, it was demonstrated that the law of the Roman Church, in its maintenance of a legalistic status of marriage and its own "jurisdiction" over it, disregards those great salutary principles in reference to the validity of contracts and the suppression of fraud which the experience of mankind has found absolutely essential. The absence in any system of jurisprudence of these principles would necessarily, even if unjustly, associate its courts in the popular mind with those facilities for escaping matrimonial obligations that prevail at Reno and at Paris.

If it be urged that the Church of Rome acts under a "Divine Revelation" which, in the theory of that Church, gives to marriage between baptized persons a status beyond all State jurisdiction, and creates over the same an exclusive jurisdiction in that Church, such considerations may excuse but in the opinion of the State they will not justify. Whatever the excuse of the Church the antagonism remains.

If, as has been said, history is the world's court, an appeal to it is justified in evaluating the claims of the Church of Rome to jurisdiction over marriage, and we may glimpse with advantage one cross-section of history in the sixteenth century, spanned by a single

generation, which had a significant relation alike to the social, the religious and the political life of men. This period is chosen because at the time the jurisdiction of the Latin Church over marriage had been undisputed for centuries, during which it had not only enacted its laws of consent and determined its dispensations and annulments, but had assumed to teach men the Christian doctrine of marital sanctity and indissolubility, and the Christian standard of moral conduct in the relation of the sexes.

It was at the beginning of the sixteenth century that King Ferdinand of Spain and King Henry VII of England, both of orthodox faith, appealed to Pope Julius II to grant a dispensation to Catherine of Aragon, the daughter of King Ferdinand and widow of Prince Arthur, King Henry's eldest son, so that she might marry Prince Henry of England, then 12 years of age, brother of her deceased husband. The marriage was conceived of and engineered purely in the interest of the political ambitions of the two Kings. The law of the Church stood in the way because it forbade marriage with a deceased brother's widow, and, further, Henry's immature age made his consent morally impossible. Nevertheless the Pope and the Kings proceeded. Interesting examples were Pope Julius and King Henry of the sanctity of marriage and of sexual morality in Holy Church, for Henry VII held the English throne under a title clouded by illegitimacy in the children of John of Gaunt and, further, by a liaison between a Queen Dowager and her squire; [23]

[23] *E. B.*, vol. xxvii, p. 362 c; vol. xiii, p. 286 d; A. F. Pollard, *Henry VIII*, pp. 5–8.

Pope Julius' licentiousness was well-known and, though priest and monk, he was the father of three illegitimate daughters when elected Pope.[24] After much consideration [25] Pope Julius II granted the dispensation and the betrothal of the twelve-year-old boy to the widowed Catherine was entered into, to be followed by marriage, six years later, on that boy's accession to the throne as King Henry VIII. Catherine bore the youthful monarch no male heir and he appealed to Pope Clement VII for a divorce [26] from her, afterwards pressing the appeal with the intention of marrying his mistress, Anne Boleyn. This divorce Clement refused as contrary to the law of the Church: he had, he claimed, no power to cancel the dispensation of Julius II. Moreover, Catherine's nephew, Charles V., had now become Emperor and supported Clement VII in his refusal. Henry's family had already been liberally treated by the Popes in regard to divorces (annulments), and the marriages of his sister Margaret and of both the husbands of his sister Mary, had all been annulled at Rome, two of them by Clement VII himself.[27] Pope Clement was of illegitimate birth, and it was significant of the morality of the age that if England, as so often alleged, had a bastard Queen in Henry's daughter, Elizabeth, the Papacy had a bastard Pope in Clement VII. Elizabeth was legitimized by Act of Parlia-

[24] *C. E.,* vol. viii, p. 562 a; *Cambridge Modern History,* vol. i, p. 243.

[25] J. A. Froude, *History of England,* vol. i, p. 115 note; Pollard, *Henry VIII,* pp. 173–174.

[26] It was annulment that was sought although it was called divorce in the language of the day.

[27] Pollard, *Henry VIII,* p. 212; see also pp. 199–200.

ment and Clement by dispensation of his cousin, Pope Leo X.[28] Henry took jurisdiction *de facto* over the law of the Church and by the enactments of the English State attempted to undo, with reckless hands, the work of Julius II. A compliant Archbishop of Canterbury annulled his marriage and an obedient Parliament legislated to suit.[29] Civil and religious shipwreck followed. Pope Clement continued to the end of his life the rôle of Papal matchmaker for children under the moral age of consent. He married his young relative and ward, Catherine de Medici, at the age of fourteen,[30] to Prince Henry of France, and the licentious and degenerate Alessandro the Moor, who was either Pope Clement's illegitimate son or that of his kinsman, the Duke of Urbino,[31] to Margaret of Parma, then fourteen years old, the illegitimate daughter of Charles V.[32] On the murder of Alessandro in an adulterous intrigue, Charles V and Pope Paul III united in marrying Margaret to Ottavio Farnese, son of Pier Luigi, who was the illegitimate son of Pope Paul III.[33]

Certain it is that the Latin Church made sorry work when it possessed exclusive and undisputed jurisdiction over marriage. Bad as conditions may be under the exercise of jurisdiction by the modern State, it is doubtful whether even a section of Main Street in the United States surpasses in moral degradation the

[28] *C. E.*, vol. iv, p. 24.

[29] Froude, *History of England,* vol. ii, pp. 212–215.

[30] *C. E.*, vol. iii, p. 443 a.

[31] L. Pastor, *Geschichte der Päpste,* vol. iv, part 2, p. 172, note 5.

[32] *E. B.*, vol. xvii, p. 703; G. F. Young, *The Medici,* vol. i, p. 499; J. L. Motley, *The Rise of the Dutch Republic,* vol. i, pp. 227–229.

[33] *Ibid.*, vol. i, p. 228; L. Ranke, *History of the Popes,* vol. i, p. 170; Young, *The Medici,* vol. i, p. 512.

record we have glimpsed in a section of the sixteenth century in the royal and Papal palaces of Europe. The reflection may perhaps be indulged that the cleansing of the Augean marriage stable of modern life may be more successfully accomplished by the Church of Christ through the forum of conscience than through a legalistic jurisdiction exercised in the right of a factitious ecclesiastical sovereignty in conflict with the State.

CHAPTER XIII

THE TWILIGHT ZONE OF POLITICS

If one were asked to designate the principle which might be regarded as paramount in the ancient political order and as the very foundation of human rights it would not be a great hazard to select that of prescription. It was quaintly defined in the sixteenth century as the principle "that, by the unanimous Consent of all Nations it is forbidden to change, or move the Things which have been for a long Time immoveable." It was that principle which kept the future locked in the past, and the rights of life, liberty, and happiness among men subject to a perpetual and universal law of mortmain.

Human rights were determined, not by the hopes and possibilities of the future, but by the failures and the dead certainties of the past. Not only were the countries of the earth assigned to permanent ownerships determined by prescriptive possession so immemorial that even their original causes were forgotten, but the people inhabiting those countries were made the living chattels attached to their lands, and with them they were transferred by bargain and sale among the lords of prescriptive right. Pope Adrian IV claimed sovereignty over Ireland because, as was said, the Donation of the Emperor Constantine, eight hundred years before, had given "all islands" to the Pope. In 1156 he donated Ireland to the sovereignty of Eng-

land [1]—so initiating the Irish question! It provoked no sensation in the world when Pope Clement IV, in 1265, sold millions of South Italians to Prince Charles of Anjou for a yearly tribute of eight hundred ounces of gold, and declared he would excommunicate the Prince if the first payment was deferred.[2] King John was acting quite within theoretic prescriptive right as ruler of England when he agreed to become the vassal of Pope Innocent III, and surrendered that kingdom and its people to him as feudal overlord.[3] But in the great transformation which we have glimpsed here and there in these pages, a new power and a new principle have superseded ancient prescription, and the chattels that were sold in the day of prescription have become the people who rule in the day of popular sovereignty. Everywhere, save in the theories of the Roman Church, the dead hands of prescription have relaxed their hold before that Civic Primacy of Peoples that subordinates the past to the future, makes prescriptive rights plastic to the welfare of mankind, and finds its highest expression in the declaration that governments derive their just powers from the consent of the governed.

It is this principle of immemorial prescription that the Roman Church is still asserting today in derogation of the Civic Primacy of the Italian People. More than half a century ago the people of the States of the Church rejected the secular rule of the Pope of Rome over those States and merged them in the present King-

[1] *C. E.*, vol. i, p. 158 a.

[2] Janus, p. 14, citing Raynald, p. 162; consult also *C. E.*, vol. iv, p. 19 d.

[3] *Ibid.*, vol. viii, p. 15 c.

dom of Italy, yet the current teaching in the Church is that the act was sacrilege and that the people in asserting their Civic Primacy were usurpers;[4] in other words, the legal and constitutional rights of the population of the States of the Church to government by consent of the governed are, even at this day, denied by the sovereignty of the Roman Church because a thousand years ago Pepin, Charlemagne and the Countess Matilda made a present of those States and their people to the Pope.[5]

Today Roman Catholic schools teach as follows:

"93. Does the Pope possess none but spiritual power?
He also possesses temporal power in the States of the Church.

94. Why is this power legitimate?
Because it rests on the best possible titles:
1. On the election and choice of those nations which, when abandoned by the emperors of the East, sought refuge under the protection of the Popes;
2. On the just conquests of Pepin and Charlemagne and on the free grant of the Countess Matilda;
3. On a prescription of over ten centuries.

95. Why is this power necessary?
In the present state of human affairs, this sovereignty is absolutely necessary for the good of the (Roman) Church and the free government of souls.

[4] *Supra*, p. 214.
[5] *Supra*, p. 76.

96. Why has the sovereignty of the Pope a sacred character?

It has a sacred and inviolable character, because it is bound up with the greatest interests of religion.

97. What crime did the usurpers of the States of the Church commit?

They were guilty of sacrilege. Moreover, the Council of Trent decreed excommunication against every Christian, who directly or indirectly, does injury to these States." [6]

This teaching is in harmony with the highest pontifical authority. Pope Pius IX expressly excommunicated all participants in and authors of the occupation of the States of the Church.[7]

Pope Leo XIII in 1890 unreservedly supported the doctrine that in the case of laws of the State manifestly at variance with the divine law, and *containing enactments hurtful to the Roman Church*, obedience to such laws by Roman Catholics is a crime.[8] The "divine law" referred to is known only in virtue of a Divine

[6] *Manual of Christian Doctrine*, pp. 128–129. For a full statement concerning this book see also *infra*, p. 267, note 22.

[7] *C. E.*, vol. xiv, p. 267 b.

[8] " . . . if the laws of the State are manifestly at variance with the divine law, containing enactments hurtful to the (Roman) Church, or conveying injunctions adverse to the duties imposed by (Roman Catholic) religion, or if they violate in the person of the supreme Pontiff the authority of Jesus Christ, then truly, to resist becomes a positive duty, to obey, a crime; a crime, moreover, combined with misdemeanor against the State itself, inasmuch as every offence levelled against (Roman Catholic) religion is also a sin against the State." Encyclical Letter *Sapientiæ Christianæ*, in *G. E. L.*, p. 185.

Revelation, of which the Roman Church is the sole depositary, and its Supreme Pontiff the sole authoritative exponent. Not only does the Church of Rome deny the right of the State, in virtue of the Civic Primacy of its People, to act to the detriment of that Church and the injury of its material interests and possessions, but it asserts the right to interfere with that Civic Primacy, to nullify it in the internal affairs of the State, to command public opinion within the State, to mould sentiment and to control elections in virtue of the obedience owed by the Roman Catholic solidarity within the State to the sovereignty of the Pope.

In 1868 Pope Pius IX issued the decree *Non expedit* [9] forbidding all Roman Catholics in the new Kingdom of Italy to participate in its political life or to take part in its elections. That Kingdom did not then embrace the Pope's territories, the States of the Church, and the decree was a high-handed interference with the Civic Primacy of the People in a State over which the Pope had no authority whatever, except the *pontifical* authority claimed by him as head of the Roman Catholic Church. The decree operated through the right claimed by the Pope to the obedience of Roman Catholics in matters both political and moral, or related to the discipline and government of the Church. It assumed to command the obedience of the solidarity of Roman Catholics and, whatever its purpose, its sure result, direct or indirect, was interference with the internal administration and political operations of a foreign State.

[9] *C. E.*, vol. xiv, p. 267 c.

Twenty years later another Pontiff, Pope Leo XIII, gave authoritative expression to this claim of the Pope on the obedience of Roman Catholics within the Twilight Zone where morals and politics inseparably blend:

" . . . This likewise must be reckoned amongst the duties of (Roman Catholic) Christians, that they allow themselves to be ruled and directed by the authority and leadership of bishops, and above all of the Apostolic See. And how fitting it is that this should be so any one can easily perceive. For the things contained in the divine oracles have reference to God in part, and in part to man, and to whatever is necessary for the attainment of his eternal salvation. Now, both these, that is to say, what we are bound to believe, and what we are obliged to do, are laid down, as we have stated, by the (Roman) Church using her divine right, and in the (Roman) Church by the supreme Pontiff. Wherefore it belongs to the Pope to judge authoritatively what things the sacred oracles contain, as well as what doctrines are in harmony, and what in disagreement, with them; and also for the same reason, to show forth what things are to be accepted as right, and what to be rejected as worthless; what it is necessary to do and what to avoid doing, in order to attain eternal salvation." [10]

The reference here to the "divine oracles" and to whatever is necessary for the attainment of salvation, when taken in connection with the claims of the Pope as supreme authority in these matters, extends the obedience owed far beyond the lines of religious authority into the Twilight Zone over which electoral majorities

10 Encyclical Letter *Sapientiæ Christianæ*, in G. E. L., p. 194.

in the modern State assert a control which, to be constitutionally valid, must be free.

The inseparability of public interests and politics from moral and religious duties is plainly recognized by Pope Leo XIII. In the same Encyclical he says:

" . . . In the public order itself of States—which cannot be severed from the laws influencing morals and from religious duties— it is always urgent, and indeed the main preoccupation, to take thought how best to consult the interests of (Roman) Catholicism. Wherever these appear by reason of the efforts of adversaries to be in danger, all differences of opinion among (Roman) Catholics should forthwith cease, so that, like thoughts and counsels prevailing, they may hasten to the aid of (Roman Catholic) religion, the general and supreme good, to which all else should be referred." [11]

We would now advert to two recent instances in France in which the principles thus set forth by Pope Leo XIII have been put into action by the Roman See, and the Civic Primacy of the French People impeded in its free constitutional action by the obedience claimed from the Roman Catholic solidarity in France to the sovereignty of the Pope.

In 1894 a social and political movement developed, resulting in the formation of a league or association called *Le Sillon* (The Furrow).[12] It expanded rapidly,

[11] *G. E. L.*, p. 197.

[12] P. T. Moon, *The Labor Problem and the Social Catholic Movement in France*, pp. 375–382. It is to Dr. Moon's book that we refer as authority for the statements here made in respect to the *Sillon*.

established its journal *L'Eveil démocratique* (*The Democratic Call*), and also a review. In 1902 it began to hold its national conventions, growing rapidly in attendance from 300 to 1900 in four years. Its membership, first limited to Roman Catholics, was extended to all believers in democracy, regardless of creed. It had a direct influence upon a large number of workingmen. Its aim was to impart an ardent spirit of political and social democracy, of liberty, equality, and fraternity. In doing this it sought to avail itself of the social forces of Roman Catholicism. It proposed an economic program of social legislation, covering social insurance and factory laws, coöperative societies and trade unions. But some of the aims and methods of the *Sillon* were not acceptable to Pope Pius X, and he formally condemned them in a letter to the French archbishops and bishops, August 25, 1910. He claimed that the *Sillon* stood for popular sovereignty and the levelling of social classes (both ideas, says Dr. Moon, having been branded by Pope Leo XIII as erroneous); declared visionary the idea of the *Sillon* that man could not be truly man until he has acquired a conscience that can dispense with a master; and complained that the *Sillon* enfeoffed religion to a political party and made Christianity the servant of democracy. Dr. Moon adds that the Pope's letter was the death-blow for the *Sillon*.

As matters stand it would seem clear that the actions and words of Pope Pius X in regard to the *Sillon* are in flat conflict with the existing political order of the modern State. He claimed that the *Sillon* would enfeoff religion to a political party; but it may be asked if

this is worse than to enfeoff a nation to a particular religion. He claimed that it made Christianity the servant of democracy, but if he had been asked: "What is Christianity?" he would have answered: "the Roman Catholic Church." It would seem quite as reasonable that a single church or association should be the servant of democracy as that democracy should be the servant of a single Church.

If the fundamental claims of that Church which was represented by Pope Pius X are true; if by the Revelation of God to man it is established that the Roman Catholic Church is the sole recipient of that Revelation and, therefore, exclusively the true Church of Christ; if that Church is by Divine appointment a co-sovereignty with the State; and if the Pope is the Vicar of Christ on earth, then it is obvious that the Pope is not only sovereign in Divine right over the Church but sovereign in Divine right, as Innocent III claimed, over the whole moral world. If that conclusion be correct the validity of the claims, and the action of Pope Pius X in interfering with the course of politics in France in the episode of the *Sillon*, cannot be disputed. But such validity is not recognized in the political order of the modern State. By that order and in its very nature it is distinctly repudiated and condemned.

The episode of the *Action Française* is even more significant than that of the *Sillon*. On December 29, 1926, Pope Pius XI placed upon the Index of Prohibited Books the French journal known as *l'Action Française*, edited by MM. Charles Maurras and Leon Daudet, the leading journal of the political party

known by the same name. The platform of that party was the restoration of the monarchy to France, in lieu of the Republic, by the due and constitutional amendment of the constitution. The party is said to have been one of considerable influence, and to have embraced within its membership men of all beliefs, including large numbers of Roman Catholics. To the latter the action of the Pope prohibited the reading of the journal, and thereby largely crippled the activities of the party.[13]

It is not necessary to enter into any consideration of the merits of the controversy. It is the *result* of Papal action, not its cause, that is significant here. Cardinal DuBois, Archbishop of Paris, has lately said:

"The Pope . . . did not condemn the *Action Française* because it defends the monarchy . . . This condemnation was not directed against a political group, but against a doctrine which on a number of points is contrary to the teachings of the (Roman) Church, and a method of procedure which is contrary to the laws of Christian morality." [14]

It is clear, therefore, that the Pope's action was not caused by objections to the platform of the political party itself, but to incidental matters involving morals or religion which, in the opinion of the Pope, were objectionable. But here again the exercise of the jurisdiction claimed by the Pope over morals had the effect of substantially nullifying the Civic Primacy of the French people through the obedience *de fide* required by the Pope of the Roman Catholic solidarity. A

[13] *Vide supra* p. 176.
[14] *Catholic News,* December 3, 1927.

political platform heretofore supported, in part, by numerous Roman Catholics, is to be discredited; a French political party embarrassed, if not destroyed; the result of national elections to be greatly affected: and all this not by the free exercise of the national moral consciousness which the constitutional order of the Republic demands, but by such exercise perverted and obstructed by the will and law of the Pope imposed on the Roman Catholic solidarity.

We are indebted to a leading Roman Catholic journal, the *Catholic News*,[15] for a statement by Cardinal DuBois, Archbishop of Paris, made in connection with the Pope's condemnation of the *Action Française*, which clearly discloses the inevitable collision between the Church and the Civic Primacy of the French people. According to this statement Cardinal DuBois has issued through the French press "a public declaration of policy to be followed by the (Roman) Catholics of France with regard to the elections of 1928." The Cardinal, it is reported, said:

"If all those Frenchmen are considered as (Roman) Catholics . . . who are baptized, married or buried by the (Roman) Church, then France is almost unanimously (Roman) Catholic. But those who do actually practise their religion, apply its principles in their public life and follow in all things the direction of the Episcopate, do not constitute the majority in the country. The practising (Roman) Catholics should

[15] December 3, 1927. The statement is headed "By N. C. W. C. News Service" and is dated Paris, November 21. It purports to report a public declaration made by Cardinal DuBois in the *Vie Catholique* and in an interview published in the *Gaulois*.

therefore, in the field of politics, seek alliance with other men of good principles. With these, they should enter into negotiations and reach understandings."

He then pointed out that Roman Catholics in France are confronted with two alternatives:

"By the first," [he said] "they would make only moderate demands and ally themselves with those groups which, although not professedly (Roman) Catholic, favor the maintenance of religious peace. By the second alternative, the (Roman) Catholics would constitute themselves a sort of election coalition of both republicans and monarchists combined, and draw up a program of radical demands including the abrogation of all the so-called 'lay laws.' "

Of these two alternatives the Cardinal said he favored the former.

It will certainly be interesting to Americans, who are constantly assured that the Roman Catholic Church does not seek to interfere in national politics, to discover that in France such interference is open and expressed, and that, according to the public declaration of the Cardinal Archbishop of Paris, the Church relies upon Roman Catholics in France to "apply its principles in their public life and follow in all things the direction of the Episcopate," and he lays down the political courses which may be pursued by them, and indicates his preference in the very language that would be employed by an American political leader.

The *Catholic News* finally states:

"As regards the *Action Française*, the Cardinal

Archbishop had formally read in all the churches of the diocese a last warning for all those (Roman) Catholics who, in spite of the solemn condemnation of the Pope, still continue to direct or to take part in the activities of that organization or to read its publications. All those who so persist, it was announced, will be denied Holy Communion and the privilege of being married or buried by the (Roman) Church."

It would be difficult to find in history a clearer manifestation of interference in national political affairs by a foreign sovereignty, or a bolder effort to obstruct the Civic Primacy of a nation, detaching from the nation a religious solidarity and commanding its political action in virtue of the religious obedience owed by it to such sovereignty.

The Roman Catholic journal, *The Tablet* of London, in its issue of January 21, 1928, p. 94, contains the following:

"France. The Coming Elections.—Cardinal Dubois has this message for his clergy, for the faithful of his diocese, and for all French Catholics: 'This year, 1928, is the year of the General Election and the future of France is at stake. Let us first approach Heaven with our prayers, and then we would have you remind all Catholics in due season of the principles that must guide them in fulfilling their civic duty. . . . Above all, enjoin unity which is more than ever necessary to bring about the moral recovery of our country.' "

Again, the same paper on the same page contains the following note:

"Catholic Organization in Lorraine.—Another ex-

ample of the disciplined energy of the Catholics of Eastern France is to be found in the network of societies which now covers the extensive diocese of Nancy and Toul. . . . The Bishop, Mgr. Celle, has succeeded in welding together a very powerful organization. . . . Already 55,000 out of 125,000 electors belong to these Catholic societies, whilst there are at least 20,000 other sympathizers who for reasons well understood are not in a position to declare themselves openly. This large body of voters, who constitute a majority of the electorate, will have something to say to the seven deputies to be returned to the next parliament, especially about some of the more iniquitous provisions of the Law of Associations."

We would again repeat what we have already affirmed: that neither in France nor in any other State could any objection lie to an appeal to any group of people within the State to express their views and sentiments at a State election, excepting when that group of people within the State is under a compulsory obedience to a sovereignty alien to the State, and is directed as to the principles that must guide them in fulfilling their civic duties by the officials representing, within the State, that alien sovereignty.

CHAPTER XIV

THE TWILIGHT ZONE OF EDUCATION

As the power over marriage controls the physical personality of the State, so the power over education controls its moral personality. The educational question today is recognized as comprehensive of all problems that confront us and, if it be solved, all other problems will be instantly advanced toward solution. But its solution seems to be far away, and our difficulties multiply rather than decrease.

The State under the medieval constitution escaped the most serious problems of social life by turning over religion, marriage and education to the Church. This was a possible delegation so long as the Church was undivided and all citizens were members of the Church. But from the blood of heretics, which it scattered as profusely as Cadmus sowed the dragon's teeth, there sprang up any number of churches. The modern State makes the equality of all churches before the law one of its fundamental principles. It cannot, without violating its constitutional order, assign jurisdiction over education or any other subject to any particular church. The alternative has been that the State should undertake education itself—a course justified by the consideration that all men are members of the State, whereas of any one church only some men are members. The course of the State thus far has been attended with many difficulties, and a sense of discouragement

might prevail throughout modern democracy in its efforts at education, if an investigation of the record demonstrated success when the Church had complete control.

It is well known that from about 750 on for some seven centuries the Church led the human mind into the historical error that the great territories and power enjoyed by the Pope were granted to him by the Emperor Constantine in gratitude for his cure of leprosy by Pope Sylvester I. The forged document evidencing the grant purported to vest in the Pope the Primacy over the four Patriarchs of Antioch, Alexandria, Constantinople, and Jerusalem, and also over all the bishops in the world; to make a present to him of the City of Rome and the provinces, districts, and towns of Italy, and "*all the Western regions.*" With the gift went the right in the Pope to wear, like the Emperor, an imperial crown, and purple cloak and tunic; and the Donation recorded, as a precedent for the future, that it had been the custom of the Emperor to lead the horse on which the Pope rode.[1] It assigned as the reason for the removal of Constantine to Constantinople a desire to leave the Pope unembarrassed in the exercise of authority by the Imperial presence in Italy. All this tissue of forgery and falsehood was sincerely and conscientiously taught as truth by the Church until the middle of the fifteenth century. Again, Pope Innocent III [2] by his solemn decree taught that the right asserted by the German Princes in electing the Emperor of the Holy Roman Empire was given to them by the Pope,

[1] *C. E.*, vol. v, pp. 118 d–119 a.
[2] *Ibid.*, vol. viii, p. 14 b.

although history recorded, and the Scriptures and political science alike disclosed, no possible authority in virtue of which the Pope could confer such right.[3] Innocent's view became the basis of a political theory and perverted the political life of man until it was repudiated in the modern State.

In moral philosophy there is no current State instruction that is more reprehensible than the teaching of St. Thomas Aquinas in the Church that all heretics should be exterminated from the world by death;[4] or the teaching of Pope Urban II that the killing of excommunicated persons is not murder if done from religious zeal;[5] or the teaching of St. Ignatius Loyola that white should be believed to be black if the Roman Church so rules;[6] or the teaching of Pope Gregory XVI that the doctrine of the freedom of conscience is a mad delirium;[7] or the teaching of Pope Leo XIII that he occupied on this earth the place of God Almighty.[8]

The Church blundered in science as well as in history and in moral philosophy. It put the book of Copernicus on the *Index Expurgatorius* until the sentences by which the heliocentric system was represented as certain were either omitted or changed.[9] The Inquisition declared Galileo as "vehemently suspected of heresy" because he taught the certainty of the Copernican theory. It

[3] Bryce, pp. 219–220.
[4] *Supra,* p. 28.
[5] *Supra,* p. 72.
[6] *Supra,* p. 189.
[7] *Supra,* p. 187.
[8] *Supra,* p. 21; *G. E. L.,* p. 304.
[9] *C. E.,* vol. iv, p. 353 d.

condemned him to jail, and to the recitation of the Seven Penitential Psalms once a week for three years.[10]

If education by the State exhibits occasional vagaries, and even if State legislators prescribe textbooks in history supporting their *a priori* opinions, the discouraged citizen may at least find hope in the reflection that education by the Church was not without similar difficulties.

The most vital question in education at present is the nature and extent of the autonomy of private educational societies including churches: To what extent are they subject to the control of the State? The antagonism between the State and the Roman Church in respect to this question is very sharp. A concerted movement by the Methodist Church or the Presbyterian Church in education would have no more constitutional significance for the State than the educational propaganda of Harvard University. Those churches do not claim to be sovereignties, nor to assert inherent rights at any point superior to the State, nor to be the exclusive depositary of the Revelation of God, nor to have a human head who is, in intrinsic truth, the Vicegerent of God or Vicar of Christ. It is such claims that give the Church of Rome a peculiar relation in theory to the whole body of objective moral truth and hence to education which is largely the inculcation of moral truth.

We have already seen that the constitutional guarantees of life, liberty, and the pursuit of happiness, of religious liberty and of free speech, do not, as so often claimed, grant an uncontrolled liberty in religion or in

[10] *Ibid.*, vol. vi, p. 345 b.

morals. On the other hand, the State is supreme to intervene, when necessary, in the interests of morality,[11] in the case of acts of licentiousness, of doctrines and practices inconsistent with the peace and safety of the State,[12] or which unhinge civil supremacy.[13] It is, therefore, clear that the teaching of a church or ethical society must be subject to such supervision by the State as the general welfare shall, in the opinion of the State, require. There can be no doubt, in view of the authorities already examined, that education is, like religion and commerce, subject to the Police Power of the State. It will be readily seen that the claim of the Roman Church to the right of propaganda (which is merely another name for the right to educate) as an inherent right in its putative Divine sovereignty, is in conflict with the sovereign rights of the modern State over education. The conflict of these claims, as we have seen, is sadly illustrated in the Mexican situation.[14] The question is not whether the mission, aim or purpose of a church is to teach. A church is, in its very nature, a religious and moral teacher. The question is the inherent right, in objective truth, of a church to pursue its mission, within the State, in virtue of a putative Divine sovereignty independent of the State and superior to State intervention, when the teaching of the church, in the opinion of the State, menaces the peace and safety or unhinges the civil supremacy of the latter. The modern State denies such inherent right in every

[11] *Vide supra,* p. 205.
[12] *Vide supra,* p. 205.
[13] *Vide supra* p. 206.
[14] *Vide supra,* p. 214–222.

church, and the Twilight Zone of Education is at once established between the State and the Church of Rome.

In the opinion of Mr. William D. Guthrie to the Roman Catholic Hierarchy of America [15] on the religious situation in Mexico, extended reference was made to several cases lately decided in the Supreme Court of the United States,[16] evidently under the impression that they establish, in reference to the Police Power of the State, more definite limitations than have heretofore existed, and that they widen the constitutional principles of religious liberty. An examination of them fails to support these conclusions. In these cases, which were brought by school teachers, the Supreme Court of the United States held void statutes of Nebraska and Iowa prohibiting the teaching of all foreign languages, and a statute of Ohio prohibiting the teaching of German, in all schools, whether private or public, religious or secular. In none of the statutes was there any prohibition of the teaching of the forbidden languages *except in schools*, showing that the State in each case did not regard the teaching of the prohibited languages as in itself injurious to its welfare, but merely the teaching of them in schools. The Court held this an unreasonable discrimination and, further, that the statutes violated the constitutional guarantees of life, liberty and property, and were, therefore, void. The decisions were rendered expressly upon the ground not

[15] *Vide supra*, p. 220.

[16] The cases are:
Meyer *vs.* State of Neb., 262 U. S. 390;
Bartels *vs.* State of Ia., 262 U. S. 404;
Bohning *vs.* State of Ohio, 262 U. S. 404;
Pohl *vs.* State of Ohio, 262 U. S. 404.

that the State was without power to prescribe in respect to the teaching of subjects in *schools*, if there was due occasion for it, but that the cases in question failed to disclose any due occasion. The Court made express recognition of the natural rights of parents to guide the education of their children, but expressly reserved from all impairment State constitutional powers when, in the opinion of the State, occasion should arise.

"The power of the State," [it held] "to compel attendance at some school or to make reasonable regulations for all schools, including a requirement that they shall give instruction in English, is not questioned. Nor has challenge been made of the State's power to prescribe a curriculum for institutions which it supports. Those matters are not within the present controversy." [17]

Very significant was the dissenting opinion of Mr. Justice Holmes, in which Mr. Justice Sutherland concurred, declining to agree with the Court in its decision, and stating that while he appreciated the objection to the law it appeared to him to present a question upon which men reasonably might differ and that he was unable to say that it was unconstitutional.

In the cases of Pierce (Governor of Oregon) *vs.* the Society of Sisters and *vs.* Hill Military Academy,[18] two private schools, the United States Supreme Court declared unconstitutional the more drastic statute of Oregon requiring the education of all children between the ages of 8 and 16 in public schools, to the exclusion

[17] Meyer *vs.* State of Neb., 262 U. S. 402.
[18] 268 U. S. 510.

of private schools. There was no claim in the statutes, and no testimony in the cases, to the effect that the private schools were not entirely satisfactory in their instruction and standards. The United States Supreme Court held that no reasonable purpose for the enactment of the statute in question was disclosed, that it deprived the defendants of their rights under the Fourteenth Amendment of the Federal Constitution and that it was, therefore, void. But the Court expressly held:

"No question is raised concerning the power of the State reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare."

These recent cases are, therefore, without any effect in imposing restrictions on State rights of supervision over education, or on the exercise of the State Police Power in restraining and regulating the application of the constitutional guarantees of religious or moral liberty. The principles to which the courts of this country have long given expression, and which we have adverted to in Chapter X,[19] are left unmodified, and the Twilight Zone of Education is in no sense circumscribed.

The Roman Church clearly claims the sovereign

[19] *Vide supra*, p. 204–207.

right, irrespective of the State, to educate, and for that purpose to maintain its schools and require the attendance, compulsory and obligatory, of the children of its members thereat. Dr. Woywod thus expresses the present law of the Church under the Canons of the Code:

"The education of all (Roman) Catholics from their childhood must be such that not only shall they be taught nothing contrary to the (Roman) Catholic faith and good morals, but religious and moral training shall occupy the principal place in the curriculum. . . . (Canon 1372.)

"(Roman) Catholic children shall not attend non-Catholic or undenominational schools, nor schools that are mixed (that is to say, open also to non-Catholics). The bishop of the diocese alone has the right, in harmony with the instructions of the Holy See, to decide under what circumstances, and with what safeguards against perversion, the attendance of such schools by (Roman) Catholic children may be tolerated (Canon 1374). The (Roman) Church has the right to establish schools of every grade—intermediate and higher schools as well as elementary (Canon 1375)." [20]

In view of the antagonism between the respective doctrines of the Roman Catholic Church and the modern State the practical question is presented whether that Church in its great system of schools throughout the United States is engaged in the dissemination of principles that the State may regard as in conflict with its welfare, its political order, and its constitutional law, or as unhinging civil supremacy.

[20] Woywod, vol. ii, p. 117; see also *C. E.*, vol. ii, p. 239 b, referring to decrees of Third Plenary Council of Baltimore.

An agency of great importance in the Roman Church in the instruction of children, especially "those of artisans and the poor," is the Institute of the Brothers of the Christian Schools. Its principal object is defined as "the direction of elementary gratuitous schools." Its activities for over two hundred years have extended all over the world.[21] For over thirty years the Institute has published a text-book known as its *Manual of Christian Doctrine*.[22] In 1926 it had reached its forty-eighth

[21] For an account of the Institute see *C. E.*, vol. viii, pp. 56–61, from which the following statements are taken: The growth from the early part of the last century has been widespread and constant. From 1838 to 1874 the number of houses rose from 313 to 1,149, the number of Brothers from 2,317 to 10,235, and of pupils from 144,000 to 350,000. In 1904 France objected to the instruction given by the Brothers, and between that date and 1908 closed more than 1000 establishments, and more than 1000 popular and free schools, and in addition the cheap boarding-schools for children of the working class, including technical, trade and agricultural schools. Suppressed within the boundaries of France, the Brothers established boarding-schools for French boys just over the French border in Belgium, Holland, Spain and Italy. Belgium in 1910 had 75 establishments; Lorraine, Austria, Hungary, Bohemia, Galicia, Albania, Bulgaria and Rumania, 32; Spain, including the Canaries and the Balearic Isles, 100; Italy, 34; the Levant, Turkey, Syria, and Egypt, 50; England and Ireland, 25, including colleges, industrial and normal schools. There are schools in India at Colombo, Rangoon, Penang, Moulmein, Mandalay, Singapore, Malacca, and Hong Kong in China. In many of these countries the Brothers have obtained grants from the governments. There were in 1910, 72 establishments in Mexico, Cuba, Ecuador, Colombia, Panama, Argentina, and Chile. In Canada in 1908 there were 48 establishments and 20,000 pupils. In the United States their 94 houses are spread over 33 archdioceses and dioceses. From 1910 to date figures are not available but observation shows that growth and activities have continued.

[22] The book bears the following title-page: "Course of Religious Instruction, Institute of the Brothers of the Christian Schools, *Manual of Christian Doctrine,* comprising Dogma, Moral, and Worship, by a Seminary Professor. Authorized English version. Revised in accordance with the Code of 1918. Forty-eighth edition. Published by John Joseph McVey, Philadelphia, Pa., 1926." Imprimatur of D. J. Dougherty, Archbishop of Philadelphia, 1918.

edition, published under the imprimatur of the Most Reverend D. J. Dougherty, Archbishop of Philadelphia. Its Preface states that this book

" . . . is intended as a manual of religious instruction not only in the Novitiates and Scholasticates of teaching Congregations, but also in the classes of High Schools, Academies, and Colleges."

We quote from its pages:

(p. 122) "53. What is the Pope?
(p. 123) The Pope is the vicar of Christ, the successor of St. Peter, and the visible head of the (Roman) Church.

54. Who is the invisible head of the (Roman) Church?
Our Lord Jesus Christ, who is always present in the (Roman) Church to guide and assist it.

55. Why is the Pope called the vicar of Christ?
Because he holds Christ's place and represents Him upon earth.

56. Why is he called the successor of St. Peter?

This *Manual of Christian Doctrine* is an abridgment of three volumes relating, respectively, to Dogma, Moral, and Worship. The volume entitled *Exposition of Christian Doctrine, Dogma,* (seventh edition, 1926) has incorporated in it a letter, dated 22 October, 1895, from Pope Leo XIII to the Superior General of the Brothers of the Christian Schools, stating: "It is with great joy that We have received the volumes that you have had the excellent idea of having published on the Christian doctrine, both for the use of the religious, of whom you are the Superior, and for the advantage of the youth that frequent your schools . . . We have no fear that there is anything in the books you have offered Us which deviates from an exact exposition of (Roman) Catholic dogma, for we see that they have received episcopal approbation."

Because he has inherited the authority of St. Peter, who was prince of the Apostles and the first head of the universal (Roman) Church.

57. From whom does the Pope hold his spiritual powers?
He holds them directly from Christ.

58. Who cooperate with the Pope in the government of the (Roman) Church?
Principally the cardinals. The collective body of cardinals is known as the Sacred College.

. . . . . .

(p. 130) 107. Why are the (Roman) Church and the State two distinct societies?

(p. 131) Because they differ in origin, in authority, in object, and in end.

108. How do the (Roman) Church and civil society differ in origin?
The (Roman) Church was founded by a free act of God made man; civil society results from the needs and tendencies that are natural to man. The former comes from God as author of grace; the latter, from God as author of nature.

109. How do they differ in authority?
The (Roman) Church is governed, according to the will of Christ, by St. Peter and his successors, by the Apostles, and their successors; civil society is governed by powers differing in form according to time and place.

110. How do they differ in object?

The (Roman) Church has for its object religious truth and virtue; whereas civil society looks only to temporal and earthly interests.

111. How do they differ in their end?
The end of the (Roman) Church is to lead man to everlasting happiness; the immediate end of civil society is to procure the temporal prosperity of its members.

112. Why are the qualities of the (Roman) Church superior to those of civil society, or the State?
Because the (Roman) Church is a religious and supernatural society, while the State is temporal and natural. The (Roman) Church is a universal, immutable, and immortal society, while the State is particular, variable, and temporal.

113. Why is the (Roman) Church independent of the State?
1. Because its origin, authority, object, and end are not from the State, but from Christ; 2. Because Christ willed that His Church, like Himself, should be independent of all earthly power.

114. Why is the (Roman) Church superior to the State?
(p. 132) Because the end to which the (Roman) Church tends is the noblest of all ends.

115. In what order or respect is the State subordinate to the (Roman) Church?

In the spiritual order and in all things referring to that order.

116. What right has the Pope in virtue of this supremacy?
The right to annul those laws or acts of government that would injure the salvation of souls or attack the natural rights of citizens.

117. What more should the State do than respect the rights and the liberty of the (Roman) Church?
The State should also aid, protect, and defend the (Roman) Church.

118. On what is this duty founded?
On the obligation of civil society to profess religion. For, since nations come from the Creator, they owe Him, as nations, adoration, love, and obedience, just as do individuals.

119. What then is the principal obligation of heads of States?
Their principal obligation is to practise the (Roman) Catholic religion themselves, and, as they are in power, to protect and defend it.

120. Has the State the right and the duty to proscribe schism or heresy?
Yes, it has the right and the duty to do so both for the good of the nation, and for that of the faithful themselves; for religious unity is the principal foundation of social unity.

121. When may the State tolerate dissenting worships?

(p. 133) When these worships have acquired a sort of legal existence consecrated by time and accorded by treaties or covenants.

122. May the State separate itself from the (Roman) Church?
No, because it may not withdraw from the supreme rule of Christ.

123. What name is given to the doctrine that the State has neither the right nor the duty to be united to the (Roman) Church to protect it?
This doctrine is called *Liberalism.* It is founded principally on the fact that modern society rests on liberty of conscience and of worship, on liberty of speech and of the press.

124. Why is Liberalism to be condemned?
1. Because it denies all subordination of the State to the (Roman) Church; 2. Because it confounds liberty with right; 3. Because it despises the social dominion of Christ, and rejects the benefits derived therefrom.

. . . . . .

(p. 174) 27. Do civil laws bind in conscience?
Yes; laws properly so called, passed and promulgated according to the constitution of the State, bind in conscience, no matter what may be the form of government.

28. On what conditions are civil laws binding?
Civil laws are binding on these conditions: 1. That the legislating power

> really have jurisdiction over that which is the object of the law. A civil power, for instance, has no right to legislate on matters that are strictly ecclesiastical; 2. That the legislating power pass no law contrary to the natural law, or to the positive divine law; otherwise a civil law is entirely null, and should not be observed."

It will be observed, in the answer to Question 115, that the "spiritual order" referred to must, in Roman theory, be determined by the Roman Church; in the answer to 116, that what "laws or acts of government" do in objective truth "injure the salvation of souls or attack the natural rights of citizens," can in Roman theory be determined only by the Roman Church; in the answer to 118, that the "*religion*" referred to, and in the answer to 120, the "*religious unity*" referred to, can be, in Roman theory, only the religion and unity of the Roman Church. In the answer to 27, "laws properly so called" obviously means laws that, in the theory of the Roman Church, the State has the right to pass. The necessary inference is that laws which, in the theory of the Roman Church, the State has not the right to pass, do not bind in conscience. Lastly, it must be observed that while the answer to question 27 states that civil "*laws properly so called*" *bind in conscience,* it is stated in the answer to question 28 that they are binding only *under certain conditions,* and one of those conditions is that the State "pass no law contrary to the natural law, or to the positive divine law." But the Roman Church is, in the Sovereign Pontiff, the sole

judge as to what is natural law and what is positive divine law.

All the foregoing questions and answers must be read in the light of the fundamental Roman Catholic principle we have several times referred to:

"In case of direct contradiction, making it impossible for both jurisdictions to be exercised, the jurisdiction of the (Roman) Church prevails, and that of the State is excluded." [23]

The teaching in the higher academic grades of the Roman schools is evidenced in a work of high standing, Wilmer's *Handbook of the Christian Religion*,[24] "for the use of advanced students." In this text-book, p. 500, the Profession of Faith in the Roman Church is expressly taught as including, without qualification, all things delivered, defined and declared by the Vatican Council, especially concerning the Primacy and infallible *magisterium* of the Roman Pontiff. At p. 501, the *Syllabus* of Pope Pius IX is set forth in full without qualification, yet that *Syllabus* condemns as error:

Propositions XIX, XXIV and XXVI: teaching that the (Roman) Church has not inherent rights superior to the State;

[23] *C. E.*, vol. xiv, p. 251 d.

[24] Rev. W. Wilmers, S. J. *Handbook of the Christian Religion*, edited by Rev. James Conway, S. J. This book is published under the imprimatur of the Most Reverend Patrick J. Hayes, Archbishop of New York (1921) and of Michael Augustine, Archbishop of New York (1891). Its preface states that: "It has been before the public for more than twenty years, and is universally acknowledged to be one of the very best of the many excellent text-books of religion in which the German Catholic literature particularly abounds . . ."

Proposition XXXVII: that national churches may be established exempt from the authority of the Roman Pontiff;

Proposition XLII: that in case of conflict between the laws of the State and the (Roman) Church the civil law predominates;

Proposition LV: that the (Roman) Church is to be separated from the State, and the State from the (Roman) Church;

Proposition LXXVII: that the (Roman) Catholic religion should no longer be held as the only religion of the State, to the exclusion of all other forms of worship; and

Proposition LXXVIII: that in some parts of the Catholic world immigrants be allowed the public practice of any form of worship whatever.[25]

It is clear from the text-books referred to that the teaching in Roman Catholic schools harmonizes, as one would expect, with the Encyclical Letters of its Pontiffs and the treatises of its scholars. To those outside the membership of the Roman Catholic Church these doctrines, because of their intolerance, raise grave questions of civic morality. Furthermore, in their repudiation of the principle of separation of Church and State, and the assertion of the supremacy of the Church of Rome over the State, they menace the peace and safety of the State and "unhinge civil supremacy." [26]

There are Roman Catholics, of whose honesty and sincerity there can be no doubt, who have never ac-

[25] *Infra,* appendix II, pp. 295–303.

[26] Gartin *vs.* Penick, 68 Ky. 117; *vide supra* p. 206.

quainted themselves with the doctrines of their Church as set forth in Pontifical Encyclicals or in the exposition of authoritative scholars,[27] but all Roman Catholics are familiar from childhood with the simple and concrete teaching of their Church, that the Pope is the Vicegerent of God and the Vicar of Christ on earth.[28] There is nothing said, either in Papal Encyclicals or in the detailed instruction of the Christian Brothers

[27] Thus, the Hon. Alfred E. Smith, in his article in the *Atlantic Monthly,* alluding to the doctrines to which we have here referred, said (p. 727): "I never heard of any such stuff being taught or of anybody who claimed that it was. That any group of (Roman) Catholics would teach it is unthinkable."

[28] The following questions and answers are taken from a Catechism for children in *primary* grades, which may be regarded as typical:

(p. 23) "Q. Who, in heaven, is the head of the (Roman) Church?
A. In heaven, Our Lord Jesus Christ is the head of the (Roman) Church.

(p. 24) Q. Who, on earth, is the head of the (Roman) Church?
A. On earth our Holy Father the Pope is the head of the (Roman) Church.
Q. Who was the first Pope?
A. St. Peter was the first Pope.
Q. Who made St. Peter the first Pope?
A. Our Lord Jesus Christ made St. Peter the first Pope.
Q. When did Christ make St. Peter Pope?
A. Christ made St. Peter Pope when He said to him: 'And I say to thee: that thou art Peter: and upon this rock I will build My Church, and the gates of hell shall not prevail against it.' Matt. xvi, 18.
Q. Whose place does the Pope take on earth?
A. On earth the Pope takes the place of our Lord Jesus Christ who is in heaven.
Q. How can we know the true Church?
A. We can know the true Church by four marks—It is One, Holy, (Roman) Catholic and Apostolic.
Q. In which Church are these four marks found?
A. These marks are found in the (Roman) Catholic Church alone."

Schools, that is not implicitly expressed in these titles of the Pope if accepted as intrinsically true. The political structure of the Church of Rome rests on the recognition of their intrinsic truth. As God is Truth, and as the Revelation of Scripture teaches that ". . . there is no power but of God" and that ". . . the powers that be are ordained of God," [29] the Pope, as God's Vicegerent and as Vicar of His Incarnate Son, becomes necessarily the source under God of all moral truth and of the validity of all political power, and in virtue thereof must assert his supremacy in the moral and political order of the world.[30] The mind is not logical which can hold that in the determination of moral truth or the validity of political authority there can be a difference between God and His Vicegerent, between Christ and His Vicar.

It is not within the scope of these pages to consider whether the teaching in Roman Catholic schools at present reaches a point where the interests of the State require its intervention in behalf of its peace and safety and its civil supremacy. Our purpose has been to show that there is a Twilight Zone of Education in which antagonisms between the Church of Rome and the modern State exist, and that within that zone the religious sovereignty of the Church claims to teach, and does teach, doctrine that carried to its reasonable conclusion may, in the future as in the past, unhinge the civil supremacy of the State. If the State has not yet thought it necessary to protest, neither has it at any

[29] Rom. xiii, 1.

[30] Pope Leo XIII, Encyclical Letter *Immortale Dei,* appendix III, *infra* pp. 306, 308.

point qualified that sovereign right of intervention in education which its courts have accorded to it and its constitutional order prescribes, and of which Cardinal Gibbons, as we have seen, admitted the existence.

POSTSCRIPT

As the pages of this book come to a close the Encyclical Letter of His Holiness Pope Pius XI, issued January sixth, 1928, appears in the press.

In specific words it reaffirms the claims that have broken the unity of the Church of Christ and that still hold asunder its fragments; it reaffirms the claims that have set the secular states of the world in antagonism to the Church of Rome: The Encyclical declares that only the (Roman) Catholic Church is the true religion, and, again, that Roman Catholics believe in the infallible teaching authority of the Roman Pontiff, according to the sense in which it was defined by the Vatican Council of 1870, as they believe in the Incarnate Christ and the Triune God.[1]

One hundred and fifty years ago the hand that

[1] In this Encyclical, *Mortalium Animos,* Pope Pius XI adopts the words of Lactantius: "It is only the (Roman) Catholic Church that retains the true worship. It is the fountain of truth, it is the household of the faith, it is the temple of God, so that if any one does not enter it or if any one departs from it, he is a stranger to the hope of life and salvation. No one should be deceived by continuous disputes. Life and salvation are in the balance; if they are not cared for carefully and diligently they will be lost and destroyed." And again Pope Pius says: ". . . as many as are of Christ give, for example, to the dogma of the Immaculate Conception the same faith they give to the mystery of the August Trinity and they believe in the Incarnation of the Word no differently than they believe in the infallible teaching power of the Pope, in the sense, be it understood, determined by the Vatican Ecumenical Council." These quotations are taken from the translation of the Encyclical Letter made for the National Catholic Welfare Council News Service; see *Current History,* March, 1928, pp. 796–800.

penned the Declaration of Independence wrote in the Virginia Statute of Religious Freedom these words:

" . . . the impious presumption of legislature and ruler, civil as well as ecclesiastical, who, being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, hath established and maintained false religions over the greatest part of the world and through all time . . ." [2]

It is not necessary to enlarge on the inherent antagonism between the words of Jefferson in 1779 and the words of Pius XI in 1928. The issue they raise is sharp and distinct: Wherein is the seat of moral sovereignty? The State which Jefferson created answers that it is, under God, and by reason of His Creative Word, in the Civic Primacy of the People; and that it has but one earthly limitation—the moral consciousness of the People developed with the freedom of the individual conscience.

The seat of moral sovereignty in the State must rest either in the Civic Primacy of the People, which holds itself responsible to every one, or in the ecclesiastical Primacy of a Sovereign Pope, which holds itself responsible to no one. The Primacy of the People and the Primacy of the Pope are the sole claimants of that moral sovereignty. It cannot rest in both. The choice is with mankind.

[2] *The Writings of Thomas Jefferson,* vol. ii, p. 237.

APPENDIX I

THE CONSTITUTION *PASTOR ÆTERNUS*[a]

The Vatican Council

SESSION IV

July 18, 1870

First Dogmatic Constitution on the Church of Christ

Pius, Bishop,

SERVANT OF THE SERVANTS OF GOD, WITH THE APPROVAL OF THE SACRED COUNCIL FOR PERPETUAL REMEMBRANCE

The Eternal Pastor and Bishop of our souls, in order to continue for all time the life-giving work of His Redemption, determined to build up the Holy Church, wherein, as in the house of the living God, all who believe might be united in the bond of one faith and one charity. Wherefore, before He entered into His glory, He prayed unto the Father, not for the Apostles only, but for those also who through their preaching should come to believe in Him, that all might be one, even as He the Son and the Father are one.[1] As then He sent the Apostles whom He had chosen to Himself from the world, as He Himself had been sent by the

[a] Reprinted from *Dogmatic Canons and Decrees*, pp. 239–257, (Imprimatur of John Cardinal Farley, Archbishop of New York), with the kind permission of the publishers, The Devin-Adair Company, New York.

[1] John xvii, 20 f.

Father;[2] so He willed that there should ever be pastors and teachers in His Church to the end of the world. And in order that the episcopate also might be one and undivided, and that by means of a closely united priesthood the multitude of the faithful might be kept secure in the oneness of faith and communion, He set Blessed Peter over the rest of the Apostles, and fixed in him the abiding principle of this twofold unity and its visible foundation, in the strength of which the everlasting temple should arise, and the Church in the firmness of that faith should lift her majestic front to heaven.[3] And seeing that the gates of hell with daily increase of hatred are gathering their strength on every side to upheave the foundation laid by God's own hand, and so, if that might be, to overthrow the Church: We, therefore, for the preservation, safe-keeping, and increase of the Catholic flock, with the approval of the Sacred Council, do judge it to be necessary to propose to the belief and acceptance of all the faithful, in accordance with the ancient and constant faith of the universal Church, the doctrine touching the institution, perpetuity and nature of the sacred Apostolic Primacy, in which is found the strength and solidity of the entire Church; and at the same time to proscribe and condemn the contrary errors so hurtful to the flock of Christ.

Chapter I

On the Institution of the Apostolic Primacy in Blessed Peter

We therefore teach and declare that, according to the testimony of the Gospel, the primacy of jurisdiction over the

[2] *Ib.* xx, 21.

[3] From Sermon iv, chap. ii, of St. Leo the Great, A. D. 440, vol. 1, p. 17, of edition of Ballerini, Venice, 1753; read in the eighth lection on the feast of St. Peter's Chair at Antioch, February 22.

universal Church of God was immediately and directly promised and given to Blessed Peter the Apostle by Christ the Lord. For it was to Simon alone, to whom He had already said: "Thou shalt be called Cephas," [4] that the Lord, after the confession made by him, saying, "Thou art Christ, the Son of the living God," addressed these solemn words, "Blessed art thou, Simon, Bar-Jona, because flesh and blood have not revealed it to thee, but my Father, who is in heaven. And I say to thee that thou art Peter, and upon this rock I will build my Church; and the gates of hell shall not prevail against it. And I will give to thee the keys of the kingdom of heaven. And whatsoever thou shalt bind upon earth, it shall be bound also in heaven; and whatsoever thou shalt loose on earth, it shall be loosed also in heaven." [5] And it was upon Simon alone that Jesus, after His resurrection, bestowed the jurisdiction of Chief Pastor and Ruler over all His fold in the words, "Feed My lambs, feed My sheep." [6] At open variance with this clear doctrine of Holy Scripture, as it has ever been understood by the Catholic Church, are the perverse opinions of those who, while they distort the form of government established by Christ the Lord in His Church, deny that Peter in his simple person preferably to all the other Apostles, whether taken separately or together, was endowed by Christ with a true and proper primacy of jurisdiction; or of those who assert that the same primacy was not bestowed immediately and directly upon Blessed Peter himself, but upon the Church, and through the Church on Peter as her minister.

(*Canon*) If anyone, therefore, shall say that Blessed Peter the Apostle was not appointed the Prince of the Apostles and the visible head of the whole Church Militant, or that the same directly and immediately received from the same our Lord Jesus Christ a primacy of honour only, and not of true and proper jurisdiction; let him be anathema.

[4] John i, 42.
[5] Matt. xvi, 16 ff.
[6] John xxi, 15, 17.

Chapter II

ON THE PERPETUITY OF THE PRIMACY OF BLESSED PETER IN THE ROMAN PONTIFFS

That which the Prince of Shepherds and great shepherd of the sheep, Jesus Christ our Lord, established in the person of the Blessed Apostle Peter to secure the perpetual welfare and lasting good of the Church, must, by the same institution, necessarily remain unceasingly in the Church, which, being founded upon the Rock, will stand firm to the end of the world. For none can doubt, and it is known to all ages, that the holy and Blessed Peter, the Prince and chief of the Apostles, the pillar of the faith and foundation of the Catholic Church, received the keys of the kingdom from our Lord Jesus Christ, the Saviour and Redeemer of mankind, and lives, presides and judges to this day, always in his successors the Bishops of the Holy See of Rome, which was founded by Him and consecrated by His Blood.[7] Whence, whosoever succeeds to Peter in this see does by the institution of Christ Himself obtain the primacy of Peter over the whole Church. The disposition made by Incarnate Truth (*dispositio veritatis*) therefore remains, and Blessed Peter, abiding in the rock's strength which he received (*in accepta fortitudine petræ perseverans*), has not abandoned the direction of the Church.[8] Wherefore it has at all times been necessary that every particular Church—that is to say, the faithful throughout the world—should come to the Church of Rome on account of the greater princedom which it has received; that all being associated in the unity of that see whence the rights of venerable communion spread to all, might grow together as members of one head in the compact unity of the body.[9]

[7] From the Acts (session third) of the Third General Council, namely, that of Ephesus, A. D. 431, Labbe's *Councils,* vol. viii, p. 1154, Venice edition of 1728. See also letter of St. Peter Chrysologus to Eutyches, in life prefixed to his works, p. 13, Venice, 1750.

[8] From Sermon III, chap. iii, of St. Leo the Great, vol. 1, p. 12.

[9] From St. Irenæus *against Heresies,* book III, cap. iii, p. 175,

(*Canon*) If, then, anyone shall say that it is not by the institution of Christ the Lord, or by divine right, that Blessed Peter has a perpetual line of successors in the primacy over the universal Church; or that the Roman Pontiff is not the successor of Blessed Peter in this primacy; let him be anathema.

Chapter III

ON THE POWER AND NATURE OF THE PRIMACY OF THE ROMAN PONTIFF

Wherefore, resting on plain testimonies of the Sacred Writings, and adhering to the plain and express decrees both of Our predecessors the Roman pontiffs, and of the general councils, We renew the definition of the œcumenical Council of Florence, by which all the faithful of Christ must believe that the Holy Apostolic See and the Roman pontiff possesses the primacy over the whole world; and that the Roman pontiff is the successor of Blessed Peter, Prince of the Apostles, and is true Vicar of Christ, and Head of the whole Church, and Father and teacher of all Christians; and that full power was given to him in Blessed Peter, by Jesus Christ our Lord, to rule, feed and govern the universal Church: as is also contained in the Acts of the œcumenical councils and in the sacred canons.

Hence We teach and declare that by the appointment of our Lord the Roman Church possesses a sovereignty of ordinary power over all other Churches, and that this power of jurisdiction of the Roman pontiff, which is truly episcopal, is immediate; to which all, of whatsoever rite and dignity, both pastors and faithful, both individually and collectively, are bound, by their duty of hierarchical subordination and true obedience, to submit, not only in matters which belong to faith and morals, but also in those that appertain to the

Benedictine edition, Venice, 1734; and Acts of Synod of Aquileia, A. D. 381, Labbe's *Councils,* vol. ii, p. 1185, Venice, 1721.

discipline and government of the Church throughout the world; so that the Church of Christ may be one flock under one supreme pastor, through the preservation of unity, both of communion and of profession of the same faith, with the Roman pontiff. This is the teaching of Catholic truth, from which no one can deviate without loss of faith and of salvation.

But so far is this power of the supreme pontiff from being any prejudice to that ordinary and immediate power of episcopal jurisdiction, by which bishops, who have been set by the Holy Ghost to succeed and hold the place of the Apostles,[10] feed and govern each his own flock, as true pastors, that this same power is really asserted, strengthened and protected by the supreme and universal pastor; in accordance with the words of St. Gregory the Great, "My honour is the honour of the whole Church. My honour is the firm strength of my brethren. Then am I truly honoured, when the honour due to each and all is not withheld." [11]

Further, from this supreme power possessed by the Roman Pontiff of governing the universal Church, it follows that, in the exercise of this office, he has the right of free communication with the pastors of the whole Church, and with their flocks, that they may be taught and ruled by him in the way of salvation. Wherefore We condemn and reprobate the opinions of those who hold that the communication between the supreme Head and the pastors and their flocks can lawfully be impeded; or who make this communication subject to the will of the secular power, so as to maintain that whatever is done by the Apostolic See, or by its authority, for the government of the Church, cannot have force or value unless it be confirmed by the assent of the secular power.

And since, by the divine right of Apostolic primacy, one Roman pontiff is placed over the universal Church, We further teach and declare that he is the supreme judge of the

[10] Council of Trent. Sess. XXXIII. c. iv; Acts xx, 28.

[11] From the *Letters of St. Gregory the Great,* book VIII, 30, vol. II, p. 919, Benedictine edition, Paris, 1705.

faithful,[12] and that in all causes the decision of which belongs to the Church recourse may be had to his tribunal,[13] but that none may reopen the judgment of the Apostolic See, than whose authority there is no greater, nor can any lawfully review its judgment.[14] Wherefore they err from the right path of truth who assert that it is lawful to appeal from the judgments of the Roman pontiffs to an œcumenical council, as to an authority higher than that of the Roman pontiff.

(*Canon*) If then any shall say that the Roman pontiff has the office merely of inspection or direction, and not full and supreme power of jurisdiction over the universal Church, not only in things which belong to faith and morals, but also in those things which relate to the discipline and government of the Church spread throughout the world; or assert that he possesses merely the principal part, and not all the fullness of this supreme power; or that this power which he enjoys is not ordinary and immediate, both over each and all the Churches and over each and all the pastors of the faithful; let him be anathema.

Chapter IV

CONCERNING THE INFALLIBLE TEACHING OF THE ROMAN PONTIFF

Moreover, that the supreme power of teaching (*magisterii*) is also included in the Apostolic primacy, which the Roman pontiff, as the successor of Peter, Prince of the Apostles, possesses over the whole Church, this Holy See has always held, the perpetual practice of the Church confirms, and œcumenical councils also have declared, especially those in which the East with the West met in the union of faith and

12 From a Brief of Pius VI, *Super soliditate,* of November 28, 1786.

13 From the Acts of the Fourteenth General Council (Second of Lyons), A. D. 1274. Labbe's *Councils,* vol. xiv, p. 512.

14 From Letter VIII of Pope Nicholas I, A. D. 858, to the Emperor Michael, in Labbe's *Councils,* vol. ix, pp. 1339 and 1570.

charity. For the Fathers of the Fourth Council of Constantinople, following in the footsteps of their predecessors, gave forth this solemn profession: The first condition of salvation is to keep the rule of the true faith. And because the sentence of our Lord Jesus Christ cannot be passed by, Who said, "Thou art Peter, and upon this rock I will build my Church," [15] these things which have been said are proved by events, because in the Apostolic See the Catholic religion has always been kept undefiled, and her well-known doctrine has been kept holy. Desiring, therefore, not to be in the least degree separated from the faith and doctrine of this see, we hope that we may deserve to be in the one communion, which the Apostolic see preaches, in which is the entire and true solidity of the Christian religion.[16]

And, with the approval of the Second Council of Lyons, the Greeks professed that: "the holy Roman Church enjoys supreme and full primacy and princedom over the whole Catholic Church, which it truly and humbly acknowledges that it has received with the plenitude of power from our Lord Himself in the person of Blessed Peter, Prince and Head of the Apostles, whose successor the Roman pontiff is; and as the Apostolic see is bound before all others to defend the truth of faith, so also, if any questions regarding faith shall arise, they must be defined by its judgment." [17]

Finally, the Council of Florence defined that: [18] "the Roman Pontiff is the true Vicar of Christ, and the head of the whole Church and the father and teacher of all Christians; and that to him in Blessed Peter was delivered by our Lord Jesus Christ the full power of feeding, ruling and governing the whole Church."

To satisfy this pastoral duty, our predecessors ever made

[15] Matt. xvi, 18.

[16] From the Formula of St. Hormisdas, subscribed by the Fathers of the Eighth General Council (Fourth of Constantinople), A. D. 869. Labbe's *Councils*, vol. v, pp. 583, 622.

[17] From the Acts of the Fourteenth General Council (Second of Lyons), A. D. 1274. Labbe, vol. xiv, p. 512.

[18] From the Acts of the Seventeenth General Council (that of Florence), A. D. 1438; Labbe, vol. xviii, p. 526.

unwearied efforts that the salutary doctrine of Christ might be propagated among all the nations of the earth, and with equal care watched that it might be preserved genuine and pure where it had been received. Therefore the bishops of the whole world, now singly, now assembled in synod, following the long-established custom of Churches [19] and the form of the ancient rule,[20] sent word to this Apostolic See of those dangers especially which sprang up in matters of faith, that there the losses of faith might be most effectually repaired where the faith cannot fail.[21] And the Roman pontiffs, according to the exigencies of times and circumstances, sometimes assembling œcumenical councils, or asking for the mind of the Church scattered throughout the world, sometimes by particular synods, sometimes using other helps which divine Providence supplied, defined as to be held those things which with the help of God they had recognized as conformable with the sacred Scriptures and Apostolic traditions. For the Holy Spirit was not promised to the successors of Peter, that by His revelation they might make known new doctrine, but that by His assistance they might inviolably keep and faithfully expound the revelation or deposit of faith delivered through the Apostles. And indeed all the venerable Fathers have embraced and the holy orthodox Doctors have venerated and followed their apostolic doctrine; knowing most fully that this See of Saint Peter remains ever free from all blemish of error, according to the divine promise of the Lord Our Saviour made to the Prince of His disciples: "I have prayed for thee that thy faith fail not; and thou being once converted, confirm thy brethren." [22]

This gift, then, of truth and never-failing faith was con-

19 From a letter of St. Cyril of Alexandria to Pope St. Celestine I, A. D. 422, vol. vi, p. 36, Paris edition of 1638.

20 From a rescript of St. Innocent I to the Council of Milevis, A. D. 402. Labbe, vol. iii, p. 47.

21 From a letter of St. Bernard to Pope Innocent II, A. D. 1130; Epist. 191, vol. iv, p. 433, Paris edition of 1742.

22 Luke xxii, 32. See also the Acts of the Sixth General Council, A. D. 680; Labbe, vol. vii, p. 659.

ferred by Heaven upon Peter and his successors in this Chair, that they might perform their high office for the salvation of all; that the whole flock of Christ, kept away by them from the poisonous food of error, might be nourished with the pasture of heavenly doctrine; that, the occasion of schism being removed, the whole Church might be kept one, and resting in its foundation, might stand firm against the gates of hell.

But since in this very age, in which the salutary efficacy of the Apostolic office is most of all required, not a few are found who take away from its authority, We judge it altogether necessary solemnly to assert the prerogative which the Only-begotten Son of God vouchsafed to join with the supreme pastoral office.

Therefore, faithfully adhering to the tradition received from the beginning of the Christian faith, for the glory of God our Saviour, the exaltation of the Catholic religion, and the salvation of Christian people, with the approval of the sacred council, We teach and define that it is a dogma divinely revealed: that the Roman Pontiff, when he speaks *ex cathedra*, that is, when, in discharge of the office of pastor and teacher of all Christians, by virtue of his supreme Apostolic authority, he defines a doctrine regarding faith or morals to be held by the universal Church, is, by the divine assistance promised to him in Blessed Peter, possessed of that infallibility with which the divine Redeemer willed that His Church should be endowed in defining doctrine regarding faith or morals; and that, therefore, such definitions of the Roman pontiff are of themselves, and not from the consent of the Church, irreformable.[23]

But if anyone—which may God avert!—presume to contradict this our definition, let him be anathema.

Given at Rome in public session, solemnly held in the Vatican Basilica in the year of our Lord one thousand eight hun-

[23] In the words used by Pope Nicholas I, note 13, and in the Synod of Quedlinburg, A. D. 1085, "It is allowed to none to revise its judgment, and to sit in judgment upon what it has judged."—Labbe, vol. xii, p. 679.

dred and seventy, on the eighteenth day of July, in the twenty-fifth year of Our Pontificate.

In conformity with the original.

JOSEPH, BISHOP OF ST. POLTEN,
Secretary to the Vatican Council.

APPENDIX II

THE *SYLLABUS* OF PIUS IX[1]

Syllabus of the principal errors of our time, which are censured in the consistorial Allocutions, Encyclical and other Apostolical Letters of our Most Holy Lord, Pope Pius IX.

I

Pantheism, Naturalism and Absolute Rationalism

1. There exists no Supreme, all-wise, all-provident Divine Being, distinct from the universe, and God is identical with the nature of things, and is, therefore, subject to changes. In effect, God is produced in man and in the world, and all things are God and have the very substance of God, and God is one and the same thing with the world, and, therefore, spirit with matter, necessity with liberty, good with evil, justice with injustice.—*Allocution "Maxima quidem," June 9, 1862.*

2. All action of God upon man and the world is to be denied.—*Ibid.*

3. Human reason, without any reference whatsoever to God, is the sole arbiter of truth and falsehood, and of good and evil; it is law to itself, and suffices, by its natural force, to secure the welfare of men and of nations.—*Ibid.*

4. All the truths of religion proceed from the innate strength of human reason; hence reason is the ultimate standard by which man can and ought to arrive at the knowledge of all truths of every kind—*Ibid.,* and *Encyclical "Qui pluribus," Nov. 9, 1846,* etc.

[1] Reprinted from *Dogmatic Canons and Decrees,* pp. 187–209, (Imprimatur of John Cardinal Farley, Archbishop of New York), with the kind permission of the publishers, The Devin-Adair Company, New York.

5. Divine revelation is imperfect, and therefore subject to a continual and indefinite progress, corresponding with the advancement of human reason.—*Ibid.*

6. The faith of Christ is in opposition to human reason, and divine revelation not only is not useful, but is even hurtful to the perfection of man.—*Ibid.*

7. The prophecies and miracles set forth and recorded in the Sacred Scriptures are the fiction of poets, and the mysteries of the Christian faith the result of philosophical investigations. In the books of the Old and the New Testament there are contained mythical inventions, and Jesus Christ is Himself a myth.—*Ibid.*

II

MODERATE RATIONALISM

8. As human reason is placed on a level with religion itself, so theological must be treated in the same manner as philosophical sciences.—*Allocution "Singulari quadam," Dec. 9, 1854.*

9. All the dogmas of the Christian religion are indiscriminately the object of natural science or philosophy; and human reason, enlightened solely in an historical way, is able, by its own natural strength and principles, to attain to the true science of even the most abstruse dogmas; provided only that such dogmas be proposed to reason itself as its object.—*Letters to the Archbishop of Munich, "Gravissimas inter," Dec. 11, 1862, and "Tuas libenter," Dec. 21, 1863.*

10. As the philosopher is one thing, and philosophy another, so it is the right and duty of the philosopher to subject himself to the authority which he shall have proved to be true; but philosophy neither can nor ought to submit to any such authority.—*Ibid., Dec. 11, 1862.*

11. The Church not only ought never to pass judgment on philosophy, but ought to tolerate the errors of philosophy, leaving it to correct itself.—*Ibid., Dec. 21, 1863.*

12. The decrees of the Apostolic See and of the Roman

congregations impede the true progress of science.—*Ibid.*

13. The method and principles by which the old scholastic doctors cultivated theology are no longer suitable to the demands of our times and to the progress of the sciences.—*Ibid.*

14. Philosophy is to be treated without taking any account of supernatural revelation.—*Ibid.*

N. B. To the rationalistic system belong in great part the errors of Anthony Günther, condemned in the letter to the Cardinal Archbishop of Cologne, "Eximiam tuam," June 15, 1857, and in that to the Bishop of Breslau, "Dolore haud mediocri," April 30, 1860.

III

INDIFFERENTISM. LATITUDINARIANISM

15. Every man is free to embrace and profess that religion which, guided by the light of reason, he shall consider true.—*Allocution "Maxima quidem," June 9, 1862; Damnatio "Multiplices inter," June 10, 1851.*

16. Man may, in the observance of any religion whatever, find the way of eternal salvation, and arrive at eternal salvation.—*Encyclical "Qui pluribus," Nov. 9, 1846.*

17. Good hope at least is to be entertained of the eternal salvation of all those who are not at all in the true Church of Christ.—*Encyclical "Quanto conficiamur," Aug. 10, 1863,* etc.

18. Protestantism is nothing more than another form of the same true Christian religion, in which form it is given to please God equally as in the Catholic Church.—*Encyclical "Noscitis," Dec. 8, 1849.*

IV

SOCIALISM, COMMUNISM, SECRET SOCIETIES, BIBLICAL SOCIETIES, CLERICO-LIBERAL SOCIETIES

Pests of this kind are frequently reprobated in the sever-

est terms in the Encyclical "Qui pluribus," Nov. 9, 1846, Allocution "Quibus quantisque," April 20, 1849, Encyclical "Noscitis et nobiscum," Dec. 8, 1849, Allocution "Singulari quadam," Dec. 9, 1854, Encyclical "Quanto conficiamur," Aug. 10, 1863.

V

ERRORS CONCERNING THE CHURCH AND HER RIGHTS

19. The Church is not a true and perfect society, entirely free; nor is she endowed with proper and perpetual rights of her own, conferred upon her by her Divine Founder; but it appertains to the civil power to define what are the rights of the Church, and the limits within which she may exercise those rights.—*Allocution "Singulari quadam," Dec. 9, 1854,* etc.

20. The ecclesiastical power ought not to exercise its authority without the permission and assent of the civil government.—*Allocution "Meminit unusquisque," Sept. 30, 1861.*

21. The Church has not the power of defining dogmatically that the religion of the Catholic Church is the only true religion.—*Damnatio "Multiplices inter," June 10, 1851.*

22. The obligation by which Catholic teachers and authors are strictly bound is confined to those things only which are proposed to universal belief as dogmas of faith by the infallible judgment of the Church.—*Letter to the Archbishop of Munich, "Tuas libenter," Dec. 21, 1863.*

23. Roman pontiffs and œcumenical councils have wandered outside the limits of their powers, have usurped the rights of princes, and have even erred in defining matters of faith and morals.—*Damnatio "Multiplices inter," June 10, 1851.*

24. The Church has not the power of using force, nor has she any temporal power, direct or indirect.—*Apostolic Letter "Ad Apostolicæ," Aug. 22, 1851.*

25. Besides the power inherent in the episcopate, other

temporal power has been attributed to it by the civil authority, granted either explicitly or tacitly, which on that account is revocable by the civil authority whenever it thinks fit.—*Ibid.*

26. The Church has no innate and legitimate right of acquiring and possessing property.—*Allocution "Nunquam fore," Dec. 15, 1856; Encyclical "Incredibili," Sept. 7, 1863.*

27. The sacred ministers of the Church and the Roman pontiff are to be absolutely excluded from every charge and dominion over temporal affairs.—*Allocution "Maxima quidem," June 9, 1862.*

28. It is not lawful for bishops to publish even letters Apostolic without the permission of Government.—*Allocution "Nunquam fore,"* Dec. 15, 1856.

29. Favours granted by the Roman pontiff ought to be considered null, unless they have been sought for through the civil government.—*Ibid.*

30. The immunity of the Church and of ecclesiastical persons derived its origin from civil law.—*Damnatio "Multiplices inter," June 10, 1851.*

31. The ecclesiastical forum or tribunal for the temporal causes, whether civil or criminal, of clerics, ought by all means to be abolished, even without consulting and against the protest of the Holy See.—*Allocution "Nunquam fore," Dec. 15, 1856; Allocution "Acerbissimum," Sept. 27, 1852.*

32. The personal immunity by which clerics are exonerated from military conscription and service in the army may be abolished without violation either of natural right or equity. Its abolition is called for by civil progress, especially in a society framed on the model of a liberal government.—*Letter to the Bishop of Monreale "Singularis nobisque," Sept. 29, 1864.*

33. It does not appertain exclusively to the power of ecclesiastical jurisdiction by right, proper and innate, to direct the teaching of theological questions.—*Letter to the Archbishop of Munich, "Tuas libenter," Dec. 21, 1863.*

34. The teaching of those who compare the Sovereign Pontiff to a prince, free and acting in the universal Church, is a

doctrine which prevailed in the Middle Ages.—*Apostolic Letter "Ad Apostolicæ," Aug. 22, 1851.*

35. There is nothing to prevent the decree of a general council, or the act of all peoples, from transferring the supreme pontificate from the bishop and city of Rome to another bishop and another city.—*Ibid.*

36. The definition of a national council does not admit of any subsequent discussion, and the civil authority can assume this principle as the basis of its acts.—*Ibid.*

37. National churches, withdrawn from the authority of the Roman pontiff and altogether separated, can be established.—*Allocution "Multis gravibusque," Dec. 17, 1860.*

38. The Roman pontiffs have, by their too arbitrary conduct, contributed to the division of the Church into Eastern and Western.—*Apostolic Letter "Ad Apostolicæ," Aug. 22, 1851.*

VI

ERRORS ABOUT CIVIL SOCIETY, CONSIDERED BOTH IN ITSELF AND IN ITS RELATION TO THE CHURCH

39. The State, as being the origin and source of all rights, is endowed with a certain right not circumscribed by any limits.—*Allocution "Maxima quidem," June 9, 1862.*

40. The teaching of the Catholic Church is hostile to the well-being and interests of society.—*Encyclical "Qui pluribus," Nov. 9, 1846; Allocution "Quibus quantisque," April 20, 1849.*

41. The civil government, even when in the hands of an infidel sovereign, has a right to an indirect negative power over religious affairs. It therefore possesses not only the right called that of *exsequatur,* but also that of appeal, called *appellatio ab abusu.—Apostolic Letter "Ad Apostolicæ," Aug. 22, 1851.*

42. In the case of conflicting laws enacted by the two powers, the civil law prevails.—*Ibid.*

43. The secular power has authority to rescind, declare and render null, solemn conventions, commonly called concordats, entered into with the Apostolic See, regarding the use of rights appertaining to ecclesiastical immunity, without the consent of the Apostolic See, and even in spite of its protest.—*Allocution "Multis gravibusque," Dec. 17, 1860; Allocution "In consistoriali," Nov. 1, 1850.*

44. The civil authority may interfere in matters relating to religion, morality and spiritual government: hence, it can pass judgment on the instructions issued for the guidance of consciences, conformably with their mission, by the pastors of the Church. Further, it has the right to make enactments regarding the administration of the divine sacraments, and the dispositions necessary for receiving them.—*Allocutions "In consistoriali," Nov. 1, 1850, and "Maxima quidem," June 9, 1862.*

45. The entire government of public schools in which the youth of a Christian state is educated, except (to a certain extent) in the case of episcopal seminaries, may and ought to appertain to the civil power, and belong to it so far that no other authority whatsoever shall be recognized as having any right to interfere in the discipline of the schools, the arrangement of the studies, the conferring of degrees, in the choice or approval of the teachers.—*Allocutions "Quibus luctuosissimis," Sept. 5, 1851,* and *"In consistoriali," Nov. 1, 1850.*

46. Moreover, even in ecclesiastical seminaries, the method of studies to be adopted is subject to the civil authority.—*Allocution "Nunquam fore," Dec. 15, 1856.*

47. The best theory of civil society requires that popular schools open to children of every class of the people, and, generally, all public institutes intended for instruction in letters and philosophical sciences and for carrying on the education of youth, should be freed from all ecclesiastical authority, control and interference, and should be fully subjected to the civil and political power at the pleasure of the rulers, and according to the standard of the prevalent opinions of the age.—*Epistle to the Archbishop of Freiburg, "Cum non sine," July 14, 1864.*

48. Catholics may approve of the system of educating youth, unconnected with Catholic faith and the power of the Church, and which regards the knowledge of merely natural things, and only, or at least primarily, the ends of earthly social life.—*Ibid.*

49. The civil power may prevent the prelates of the Church and the faithful from communicating freely and mutually with the Roman pontiff.—*Allocution "Maxima quidem," June 9, 1862.*

50. Lay authority possesses of itself the right of presenting bishops, and may require of them to undertake the administration of the diocese before they receive canonical institution, and the Letters Apostolic from the Holy See.—*Allocution "Nunquam fore," Dec. 15, 1856.*

51. And, further, the lay government has the right of deposing bishops from their pastoral functions, and is not bound to obey the Roman pontiff in those things which relate to the institution of bishoprics and the appointment of bishops.—*Allocution "Acerbissimum," Sept. 27, 1852; Damnatio "Multiplices inter," June 10, 1851.*

52. Government can, by its own right, alter the age prescribed by the Church for the religious profession of women and men; and may require of all religious orders to admit no person to take solemn vows without its permission.—*Allocution "Nunquam fore," Dec. 15, 1856.*

53. The laws enacted for the protection of religious orders and regarding their rights and duties ought to be abolished; nay, more, civil Government may lend its assistance to all who desire to renounce the obligation which they have undertaken of a religious life, and to break their vows. Government may also suppress the said religious orders, as likewise collegiate churches and simple benefices, even those of advowson, and subject their property and revenues to the administration and pleasure of the civil power.—*Allocutions "Acerbissimum," Sept. 27, 1852; "Probe memineritis," Jan. 22, 1855; "Cum saepe," July 26, 1855.*

54. Kings and princes are not only exempt from the jurisdiction of the Church, but are superior to the Church in de-

ciding questions of jurisdiction.—*Damnatio "Multiplices inter," June 10, 1851.*

55. The Church ought to be separated from the State, and the State from the Church.—*Allocution "Acerbissimum," Sept. 27, 1852.*

VII

ERRORS CONCERNING NATURAL AND CHRISTIAN ETHICS

56. Moral laws do not stand in need of the divine sanction, and it is not at all necessary that human laws should be made conformable to the laws of nature, and receive their power of binding from God.—*Allocution "Maxima quidem," June, 9, 1862.*

57. The science of philosophical things and morals and also civil laws may and ought to keep aloof from divine and ecclesiastical authority.—*Ibid.*

58. No other forces are to be recognized except those which reside in matter, and all the rectitude and excellence of morality ought to be placed in the accumulation and increase of riches by every possible means, and the gratification of pleasure.—*Ibid.; Encyclical "Quanto conficiamur," Aug. 10, 1863.*

59. Right consists in the material fact. All human duties are an empty word, and all human facts have the force of right. —*Allocution "Maxima quidem," June 9, 1862.*

60. Authority is nothing else but numbers and the sum total of material forces.—*Ibid.*

61. The injustice of an act when successful inflicts no injury on the sanctity of right.—*Allocution "Iamdudum cernimus," March 18, 1861.*

62. The principle of non-intervention, as it is called, ought to be proclaimed and observed.—*Allocution "Novos et ante," Sept. 28, 1860.*

63. It is lawful to refuse obedience to legitimate princes, and even to rebel against them.—*Encyclical "Qui pluribus,"*

Nov. 9, 1864; Allocution "Quibusque vestrum," Oct. 4, 1847; Noscitis et Nobiscum," Dec. 8, 1849; Letter Apostolic "Cum Catholica."

64. The violation of any solemn oath, as well as any wicked and flagitious action repugnant to the eternal law, is not only not blamable but is altogether lawful and worthy of the highest praise when done through love of country.—*Allocution "Quibus quantisque," April 20, 1849.*

VIII

ERRORS CONCERNING CHRISTIAN MARRIAGE

65. The doctrine that Christ has raised marriage to the dignity of a sacrament cannot be at all tolerated.—*Apostolic Letter "Ad Apostolicæ," Aug. 22, 1851.*

66. The Sacrament of Marriage is only a something accessory to the contract and separate from it, and the sacrament itself consists in the nuptial benediction alone.—*Ibid.*

67. By the law of nature, the marriage tie is not indissoluble, and in many cases divorce properly so called may be decreed by the civil authority.—*Ibid.; Allocution "Acerbissimum," Sept. 27, 1852.*

68. The Church has not the power of establishing diriment impediments of marriage, but such a power belongs to the civil authority by which existing impediments are to be removed.—*Damnatic "Multiplices inter," June 10, 1851.*

69. In the dark ages the Church began to establish diriment impediments, not by her own right, but by using a power borrowed from the State.—*Apostolic Letter "Ad Apostolicæ," Aug. 22, 1851.*

70. The canons of the Council of Trent, which anathematize those who dare to deny to the Church the right of establishing diriment impediments, either are not dogmatic, or must be understood as referring to such borrowed power. —*Ibid.*

71. The form of solemnizing marriage prescribed by the Council of Trent, under pain of nullity, does not bind in

cases where the civil law lays down another form, and declares that when this new form is used the marriage shall be valid.—*Ibid.*

72. Boniface VIII was the first who declared that the vow of chastity taken at ordination renders marriage void.—*Ibid.*

73. In force of a merely civil contract there may exist between Christians a real marriage, and it is false to say either that the marriage contract between Christians is always a sacrament, or that there is no contract if the sacrament be excluded.—*Ibid.; Letter to the King of Sardinia, Sept. 9, 1852; Allocutions "Acerbissimum," Sept. 27, 1852; "Multis gravibusque," Dec. 17, 1860.*

74. Matrimonial causes and espousals belong by their nature to civil tribunals.—*Encyclical "Qui pluribus," Nov. 9, 1846; Damnatio "Multiplices inter," June 10, 1851; "Ad Apostolicæ," Aug. 22, 1851; Allocution "Acerbissimum," Sept. 27, 1852.*

N. B.—To the preceding questions may be referred two other errors regarding the celibacy of priests and the preference due to the state of marriage over that of virginity. These have been stigmatized: the first in the Encyclical "Qui pluribus," Nov. 9, 1846; the second, in the Letter Apostolic "Multiplices inter," June 10, 1851.

IX

ERRORS REGARDING THE CIVIL POWER OF THE SOVEREIGN PONTIFF

75. The children of the Christian and Catholic Church are divided amongst themselves about the compatibility of the temporal with the spiritual power.—*"Ad Apostolicæ," Aug. 22, 1851.*

76. The abolition of the temporal power of which the Apostolic See is possessed would contribute in the greatest degree to the liberty and prosperity of the Church.—*Allocutions "Quibus quantisque," April 20, 1849; "Si semper antea," May 20, 1850.*

N. B.—Besides these errors, explicitly censured, very many others are implicitly condemned by the doctrine propounded and established, which all Catholics are bound most firmly to hold touching the temporal sovereignty of the Roman pontiff. This doctrine is clearly stated in the Allocutions "Quibus quantisque," April 20, 1849, and "Si semper antea," May 20, 1850; Letter Apostolic "Cum Catholica ecclesia," March 26, 1860; Allocutions, "Noves et antea," Sept. 28, 1860; "Iamdudum cernimus," March 18, 1861; "Maxima quidem," June 9, 1862.

X

ERRORS HAVING REFERENCE TO MODERN LIBERALISM

77. In the present day it is no longer expedient that the Catholic religion should be held as the only religion of the State, to the exclusion of all other forms of worship.—*Allocution "Nemo vestrum," July 26, 1855.*

78. Hence it has been wisely decided by law, in some Catholic countries, that persons coming to reside therein shall enjoy the public exercise of their own peculiar worship.—*Allocution "Acerbissimum," Sept. 27, 1852.*

79. Moreover, it is false that the civil liberty of every form of worship, and the full power, given to all, of overtly and publicly manifesting any opinions whatsoever and thoughts, conduce more easily to corrupt the morals and minds of the people, and to propagate the pest of indifferentism.—*Allocution "Nunquam fore," Dec. 15, 1856.*

80. The Roman Pontiff can, and ought to, reconcile himself, and come to terms with progress, liberalism and modern civilization.—*Allocution "Iamdudum cernimus," March 18, 1861.*

APPENDIX III

THE CHRISTIAN CONSTITUTION OF STATES[1]

Encyclical Letter *Immortale Dei,* November 1, 1885

By Pope Leo XIII

The Catholic Church, that imperishable handiwork of our all-merciful God, has for her immediate and natural purpose saving souls and securing our happiness in Heaven. Yet in regard to things temporal she is the source of benefits as manifold and great as if the chief end of her existence were to ensure the prospering of our earthly life. And in truth, wherever the Church has set her foot, she has straightway changed the face of things, and has attempered the moral tone of the people with a new civilization, and with virtues before unknown. All nations which have yielded to her sway have become eminent for their culture, their sense of justice, and the glory of their high deeds.

And yet a hackneyed reproach of old date is levelled against her, that the Church is opposed to the rightful aims of the civil government, and is wholly unable to afford help in spreading that welfare and progress which justly and naturally are sought after by every well-regulated State. From the very beginning Christians were harassed by slanderous accusations of this nature, and on that account were held up to hatred and execration, for being (so they were called) enemies of the empire. The Christian religion was moreover commonly charged with being the cause of the calamities that so fre-

[1] From *The State and the Church,* pp. 1–25, (Imprimatur of Patrick J. Hayes, Archbishop of New York), by John A. Ryan, D.D., LL.D., and Moorhouse F. X. Millar, S. J., reprinted with the kind permission of the publishers, The Macmillan Company, New York.

quently befell the State, whereas, in very truth, just punishment was being awarded to guilty nations by an avenging God. This odious calumny, with most valid reason, nerved the genius and sharpened the pen of St. Augustine, who, notably in his treatise On the City of God, set forth in so bright a light the worth of Christian wisdom in its relation to the public weal, that he seems not merely to have pleaded the cause of the Christians of his day, but to have refuted for all future times impeachments so grossly contrary to truth. The wicked proneness, however, to levy the like charges and accusations has not been lulled to rest. Many, indeed, are they who have tried to work out a plan of civil society based on doctrines other than those approved by the Catholic Church. Nay, in these latter days a novel scheme of law has begun here and there to gain increase and influence, the outcome, as it is maintained, of an age arrived at full stature, and the result of liberty in evolution. But though endeavors of various kinds have been ventured on, it is clear that no better mode has been devised for building up and ruling the State than that which is the necessary growth of the teachings of the Gospel. We deem it, therefore, of the highest moment, and a strict duty of our Apostolic office, to contrast with the lessons taught by Christ the novel theories now advanced touching the State. By this means We cherish hope that the bright shining of the truth may scatter the mists of error and doubt, so that one and all may see clearly the imperious law of life which they are bound to follow and obey.

It is not difficult to determine what would be the form and character of the State were it governed according to the principles of Christian philosophy. Man's natural instinct moves him to live in civil society, for he cannot, if dwelling apart, provide himself with the necessary requirements of life, nor procure the means of developing his mental and moral faculties. Hence it is divinely ordained that he should lead his life—be it family, social, or civil—with his fellow-men, amongst whom alone his several wants can be adequately supplied. But as no society can hold together unless some one be over all, directing all to strive earnestly for the common

good; every civilized community must have a ruling authority, and this authority, no less than society itself, has its source in nature, and has, consequently, God for its author. Hence it follows that all public power must proceed from God. For God alone is the true and supreme Lord of the world. Everything, without exception, must be subject to Him, and must serve Him, so that whosoever holds the right to govern, holds it from one sole and single source, namely, God, the Sovereign Ruler of all. *There is no power but from God.* (Rom. xiii, 1.)

The right to rule is not necessarily, however, bound up with any special mode of government. It may take this or that form, provided only that it be of a nature to insure the general welfare. But whatever be the nature of the government, rulers must ever bear in mind that God is the paramount ruler of the world, and must set Him before themselves as their exemplar and law in the administration of the State. For, in things visible, God has fashioned secondary causes, in which His divine action can in some wise be discerned, leading up to the end to which the course of the world is ever tending. In like manner in civil society, God has always willed that there should be a ruling authority, and that they who are invested with it should reflect the divine power and providence in some measure over the human race.

They, therefore, who rule should rule with even-handed justice, not as masters, but rather as fathers, for the rule of God over man is most just, and is tempered always with a father's kindness. Government should, moreover, be administered for the well-being of the citizens because they who govern others possess authority solely for the welfare of the State. Furthermore, the civil power must not be subservient to the advantage of any one individual or of some few persons, inasmuch as it was established for the common good of all. But if those who are in authority rule unjustly, if they govern overbearingly or arrogantly, and if their measures prove hurtful to the people, they must remember that the Almighty will one day bring them to account, the more strictly in proportion to the sacredness of their office and pre-eminence of their

dignity. *The mighty shall be mightily tormented.* (Wisd. vi, 7.) Then truly will the majesty of the law meet with the dutiful and willing homage of the people, when they are convinced that their rulers hold authority from God, and feel that it is a matter of justice and duty to obey them, and to show them reverence and fealty, united in a love not unlike that which children show their parents. *Let every soul be subject to higher powers.* (Rom. xiii, 1.) To despise legitimate authority, in whomsoever vested, is unlawful, as a rebellion against the Divine will, and whoever resists that, rushes wilfully to destruction. *He that resisteth the power resisteth the ordinance of God, and they that resist, purchase to themselves damnation.* (Ibid. xiii, 2.) To cast aside obedience, and by popular violence to incite to revolt, is therefore treason, not against man only, but against God.

As a consequence, the State, constituted as it is, is clearly bound to act up to the manifold and weighty duties linking it to God, by the public profession of religion. Nature and reason, which command every individual devoutly to worship God in holiness, because we belong to Him and must return to Him since from Him we came, bind also the civil community by a like law. For men living together in society are under the power of God no less than individuals are, and society, not less than individuals, owes gratitude to God, who gave it being and maintains it, and whose ever-bounteous goodness enriches it with countless blessings. Since, then, no one is allowed to be remiss in the service due to God, and since the chief duty of all men is to cling to religion in both its teaching and practice—not such religion as they may have a preference for, but the religion which God enjoins, and which certain and most clear marks show to be the only one true religion—it is a public crime to act as though there were no God. So, too, is it a sin in the State not to have care for religion, as a something beyond its scope, or as of no practical benefit; or out of many forms of religion to adopt that one which chimes in with the fancy; for we are bound absolutely to worship God in that way which He has shown to be His will. All who rule, therefore, should hold in honor the holy

name of God, and one of their chief duties must be to favor religion, to protect it, to shield it under the credit and sanction of the laws, and neither to organize nor enact any measure that may compromise its safety. This is the bounden duty of rulers to the people over whom they rule. For one and all are we destined by our birth and adoption to enjoy, when this frail and fleeting life is ended, a supreme and final good in Heaven, and to the attainment of this every endeavor should be directed. Since, then, upon this depends the full and perfect happiness of mankind, the securing of this end should be of all imaginable interests the most urgent. Hence civil society, established for the common welfare, should not only safeguard the well-being of the community, but have also at heart the interests of its individual members, in such mode as not in any way to hinder, but in every manner to render as easy as may be, the possession of that highest and unchangeable good for which all should seek. Wherefore, for this purpose, care must especially be taken to preserve unharmed and unimpeded the religion whereof the practice is the link connecting man with God..

Now, it cannot be difficult to find out which is the true religion, if only it be sought with an earnest and unbiassed mind; for proofs are abundant and striking. We have, for example, the fulfilment of prophecies; miracles in great number; the rapid spread of the faith in the midst of enemies and in face of overwhelming obstacles; the witness of the martyrs, and the like. From all these it is evident that the only true religion is the one established by Jesus Christ Himself, and which He committed to His Church to protect and to propagate.

For the only-begotten Son of God established on earth a society which is called the Church, and to it He handed over the exalted and divine office which He had received from His Father, to be continued through the ages to come. *As the Father hath sent Me, I also send you.* (John xx, 21.) *Behold I am with you all days, even to the consummation of the world.* (Matt. xxviii, 20.) Consequently, as Jesus Christ came into the world that men *might have life and have it more abun-*

dantly (John x, 10.), so also has the Church for its aim and end the eternal salvation of souls, and hence it is so constituted as to open wide its arms to all mankind, unhampered by any limit of either time or place. *Preach ye the Gospel to every creature.* (Mark xvi, 15.)

Over this mighty multitude God has Himself set rulers with power to govern; and He has willed that one should be the head of all, and the chief and unerring teacher of truth, to whom He has given *the keys of the kingdom of heaven.* (Matt. xvi, 19.) *Feed My lambs, feed my sheep.* (John xxi, 16, 17.) *I have prayed for thee that thy faith fail not.* (Luke xxii, 32.)

This society is made up of men, just as civil society is, and yet is supernatural and spiritual, on account of the end for which it was founded, and of the means by which it aims at attaining that end. Hence it is distinguished and differs from civil society, and what is of highest moment, it is a society chartered as of right divine, perfect in its nature and in its title, to possess in itself and by itself, through the will and loving kindness of its Founder, all needful provision for its maintenance and action. And just as the end at which the Church aims is by far the noblest of ends, so is its authority the most exalted of all authority, nor can it be looked upon as inferior to the civil power, or in any manner dependent upon it.

In very truth Jesus Christ gave to His Apostles unrestrained authority in regard to things sacred, together with the genuine and most true power of making laws as also with the twofold right of judging and of punishing, which flow from that power. *All power is given to Me in heaven and on earth: going therefore teach all nations . . . teaching them to observe all things whatsoever I have commanded you.* (Matt. xxviii, 18–20.) And in another place, *If he will not hear them, tell the Church.* (Matt. xviii, 17.) And again, *In readiness to revenge all disobedience.* (2 Cor. x, 6.) And once more, *That . . . I may not deal more severely according to the power which the Lord hath given me, unto edification and not unto destruction.* (2 Cor. xiii, 10.) Hence it is the Church, and not

the State, that is to be man's guide to Heaven. It is to the Church that God has assigned the charge of seeing to, and legislating for, all that concerns religion; of teaching all nations; of spreading the Christian faith as widely as possible; in short, of administering freely and without hindrance, in accordance with her own judgment, all matters that fall within its competence.

Now this authority, perfect in itself, and plainly meant to be unfettered, so long assailed by a philosophy that truckles to the State, the Church has never ceased to claim for herself and openly to exercise. The Apostles themselves were the first to uphold it, when, being forbidden by the rulers of the Synagogue to preach the Gospel, they courageously answered, *We must obey God rather than men.* (Acts v, 29.) This same authority the holy Fathers of the Church were always careful to maintain by weighty arguments, according as occasion arose, and the Roman Pontiffs have never shrunk from defending it with unbending constancy. Nay more, princes and all invested with power to rule have themselves approved it, in theory alike and in practice. It cannot be called in question that in the making of treaties, in the transaction of business matters, in sending and receiving Ambassadors, and in the interchange of other kinds of official dealings, they have been wont to treat with the Church as with a supreme and legitimate power. And assuredly all ought to hold that it was not without a singular disposition of God's providence that this power of the Church was provided with a civil sovereignty as the surest safeguard of her independence.

The Almighty, therefore, has appointed the charge of the human race between two powers, the ecclesiastical and the civil, the one being set over divine, the other over human things. Each in its kind is supreme, each has fixed limits within which it is contained, limits which are defined by the nature and special object of the province of each, so that there is, we may say, an orbit traced out within which the action of each is brought into play by its own native right. But inasmuch as each of these two powers has authority over the same subjects, and as it might come to pass that one and the same thing—

related differently, but still remaining one and the same thing —might belong to the jurisdiction and determination of both, therefore God, who foresees all things, and who is the author of these two powers, has marked out the course of each in right correlation to the other. *For the powers that are, are ordained of God.* (Rom. xiii, 1.) Were this not so, deplorable contentions and conflicts would often arise, and not infrequently men, like travelers at the meeting of two roads, would hesitate in anxiety and doubt, not knowing what course to follow. Two powers would be commanding contrary things, and it would be a dereliction of duty to disobey either of the two.

But it would be most repugnant to deem thus of the wisdom and goodness of God. Even in physical things, albeit of a lower order, the Almighty has so combined the forces and springs of nature with tempered action and wondrous harmony that no one of them clashes with any other, and all of them most fitly and aptly work together for the great purpose of the universe. There must, accordingly, exist, between these two powers, a certain orderly connection, which may be compared to the union of the soul and body in man. The nature and scope of that connection can be determined only, as We have laid down, by having regard to the nature of each power, and by taking account of the relative excellence and nobleness of their purpose. One of the two has for its proximate and chief object the well-being of this mortal life; the other the everlasting joys of Heaven. Whatever, therefore, in things human is of a sacred character, whatever belongs either of its own nature or by reason of the end to which it is referred, to the salvation of souls, or to the worship of God, is subject to the power and judgment of the Church. Whatever is to be ranged under the civil and political order is rightly subject to the civil authority. Jesus Christ has Himself given command that what is Cæsar's is to be rendered to Cæsar, and that what belongs to God is to be rendered to God.

There are, nevertheless, occasions when another method of concord is available for the sake of peace and liberty: We mean when rulers of the State and the Roman Pontiff come to

an understanding touching some special matter. At such times the Church gives signal proof of her motherly love by showing the greatest possible kindliness and indulgence.

Such then, as We have briefly pointed out, is the Christian organization of civil society; not rashly or fancifully shaped out, but educed from the highest and truest principles, confirmed by natural reason itself.

In such an organization of the State, there is nothing that can be thought to infringe upon the dignity of rulers, and nothing unbecoming them; nay, so far from degrading the sovereign power in its due rights, it adds to it permanence and lustre. Indeed, when more fully pondered, this mutual coordination has a perfection in which all other forms of government are lacking, and from which excellent results would flow, were the several component parts to keep their place and duly discharge the office and work appointed respectively for each. And, doubtless, in the Constitution of the State such as we have described, divine and human things are equitably shared; the rights of citizens assured to them, and fenced round by divine, by natural, and by human law; the duties incumbent on each one being wisely marked out, and their fulfilment fittingly insured. In their uncertain and toilsome journey towards the city made without hands, all see that they have safe guides and helpers on their way, and are conscious that others have charge to protect their persons alike and their possessions, and to obtain or preserve for them everything essential for their present life. Furthermore, domestic society acquires that firmness and solidity so needful to it, from the holiness of marriage, one and indissoluble, wherein the rights and duties of husband and wife are controlled with wise justice and equity; due honor is assured to the woman; the authority of the husband is conformed to the pattern afforded by the authority of God; the power of the father is tempered by a due regard for the dignity of the mother and her offspring; and the best possible provision is made for the guardianship, welfare, and education of the children.

In political affairs, and all matters civil, the laws aim at securing the common good, and are not framed according to

the delusive caprices and opinions of the mass of the people, but by truth and by justice; the ruling powers are invested with a sacredness more than human, and are withheld from deviating from the path of duty, and from overstepping the bounds of rightful authority; and the obedience of citizens is rendered with a feeling of honor and dignity, since obedience is not the servitude of man to man, but submission to the will of God, exercising His sovereignty through the medium of men. Now, this being recognized as undeniable, it is felt that the high office of rulers should be held in respect; that public authority should be constantly and faithfully obeyed; that no act of sedition should be committed; and that the civic order of the commonwealth should be maintained as sacred.

So, also, as to the duties of each one towards his fellowmen, mutual forbearance, kindliness, generosity, are placed in the ascendant; the man who is at once a citizen and a Christian is not drawn aside by conflicting obligations; and, lastly, the abundant benefits with which the Christian religion, of its very nature, endows even the mortal life of man, are acquired for the community and civil society. And this to such an extent that it may be said in sober truth: "The condition of the commonwealth depends on the religion with which God is worshipped: and between one and the other there exists an intimate and abiding connection." (*Sacr. Imp. ad Cyrillum Alexand. et Episcopos Metrop.* Cfr. Labbe, *Collect. Conc.*, T. iii.)

Admirably, according to his wont, does St. Augustine, in many passages, enlarge upon the potency of these advantages; but nowhere more markedly and to the point than when he addresses the Catholic Church in the following words: "Thou dost teach and train children with much tenderness, young men with much vigor, old men with much gentleness; as the age not of the body alone, but of the mind of each requires. Women thou dost subject to their husbands in chaste and faithful obedience, not for the gratifying of their lust, but for bringing forth children, and for having a share in the family concerns. Thou dost set husbands over their wives,

not that they may play false to the weaker sex, but according to the requirements of sincere affection. Thou dost subject children to their parents in a kind of free service, and dost establish parents over their children with a benign rule."

". . . Thou joinest together, not in society only, but in a sort of brotherhood, citizen with citizen, nation with nation, and the whole race of men, by reminding them of their common parentage. Thou teachest kings to look to the interests of their people, and dost admonish the people to be submissive to their kings. With all care dost thou teach all to whom honor is due, and affection, and reverence, and fear, consolation, and admonition, and exhortation, and discipline, and reproach, and punishment. Thou showest that all these are not equally incumbent on all, but that charity is owing to all, and wrong-doing to none." (*De moribus Eccl. Cathol.* xxx, 63.) And in another place, blaming the false wisdom of certain time-saving philosophers, he observes: "Let those who say that the teachings of Christ is hurtful to the State, produce such armies as the maxims of Jesus have enjoined soldiers to bring into being; such governors of provinces; such husbands and wives; such parents and children; such masters and servants; such kings; such judges, and such payers and collectors of tribute, as the Christian teaching instructs them to become, and then let them dare to say that such teaching is hurtful to the State. Nay, rather will they hesitate to own that this discipline, if duly acted up to, is the very mainstay of the commonwealth?" (*Epist.* 138, *al.* 5, *ad Marcellinum*, ii, 15.)

There was once a time when States were governed by the principles of Gospel teaching. Then it was that the power and divine virtue of Christian wisdom had diffused itself throughout the laws, institutions, and morals of the people, permeating all ranks and relations of civil society. Then, too, the religion instituted by Jesus Christ, established firmly in befitting dignity, flourished everywhere, by the favor of princes and the legitimate protection of magistrates; and Church and State were happily united in concord and friendly interchange of good offices. The State, constituted in this wise, bore fruits important beyond all expectation, whose remembrance is still,

and always will be, in renown, witnessed to as they are by countless proofs which can never be blotted out or even obscured by any craft of any enemies. Christian Europe has subdued barbarous nations, and changed them from a savage to a civilized condition, from superstition to true worship. It victoriously rolled back the tide of Mohammedan conquest; retained the headship of civilization; stood forth in the front rank as the leader and teacher of all, in every branch of national culture; bestowed on the world the gift of true and many-sided liberty; and most wisely founded very numerous institutions for the solace of human suffering. And if we inquire how it was able to bring about so altered a condition of things, the answer is—Beyond all question, in large measure, through religion; under whose auspices so many great undertakings were set on foot, through whose aid they were brought to completion.

A similar state of things would certainly have continued had the agreement of the two powers been lasting. More important results even might have been justly looked for, had obedience waited upon the authority, teaching, and counsels of the Church, and had this submission been specially marked by greater and more unswerving loyalty. For that should be regarded in the light of an ever-changeless law which Ivo of Chartres wrote to Pope Paschal II: "When kingdom and priesthood are at one, in complete accord, the world is well ruled, and the Church flourishes, and brings forth abundant fruit. But when they are at variance, not only smaller interests prosper not, but even things of greatest moment fall into deplorable decay." (*Epist.* 238.)

Sad it is to call to mind how the harmful and lamentable rage for innovation which rose to a climax in the sixteenth century, threw first of all into confusion the Christian religion, and next, by natural sequence, invaded the precincts of philosophy, whence it spread amongst all classes of society. From this source, as from a fountain-head, burst forth all those later tenets of unbridled license which, in the midst of the terrible upheavals of the last century, were wildly conceived and boldly proclaimed as the principles and foundation

of that new jurisprudence which was not merely previously unknown, but was at variance on many points with not only the Christian, but even with the natural law.

Amongst these principles the main one lays down that as all men are alike by race and nature, so in like manner all are equal in the control of their life; that each one is so far his own master as to be in no sense under the rule of any other individual; that each is free to think on every subject just as he may choose, and to do whatever he may like to do; that no man has any right to rule over other men. In a society grounded upon such maxims, all government is nothing more or less than the will of the people, and the people, being under the power of itself alone, is alone its own ruler. It does choose nevertheless some to whose charge it may commit itself, but in such wise that it makes over to them not the right so much as the business of governing, to be exercised, however, in its name.

The authority of God is passed over in silence, just as if there were no God; or as if He cared nothing for human society; or as if men, whether in their individual capacity or bound together in social relations, owed nothing to God; or as if there could be a government of which the whole origin and power and authority did not reside in God Himself. Thus, as is evident, a State becomes nothing but a multitude, which is its own master and ruler. And since the populace is declared to contain within itself the spring-head of all rights and of all power, it follows that the State does not consider itself bound by any kind of duty towards God. Moreover, it believes that it is not obliged to make public profession of any religion; or to inquire which of the very many religions is the only one true; or to prefer one religion to all the rest; or to show to any form of religion special favor; but, on the contrary, is bound to grant equal rights to every creed, so that public order may not be disturbed by any particular form of religious belief.

And it is a part of this theory that all questions that concern religion are to be referred to private judgment; that every one is to be free to follow whatever religion he prefers,

or none at all if he disapprove of all. From this the following consequences logically flow: that the judgment of each one's conscience is independent of all law; that the most unrestrained opinions may be openly expressed as to the practice or omission of divine worship; and that every one has unbounded license to think whatever he chooses and to publish abroad whatever he thinks.

Now when the State rests on foundations like those just named—and for the time being they are greatly in favor—it readily appears into what and how unrightful a position the Church is driven. For when the management of public business is in harmony with doctrines of such a kind, the Catholic religion is allowed a standing in civil society equal only, or inferior, to societies alien from it; no regard is paid to the laws of the Church, and she who, by the order and commission of Jesus Christ, has the duty of teaching all nations, finds herself forbidden to take any part in the instruction of the people. With reference to matters that are of twofold jurisdiction, they who administer the civil power lay down the law at their own will, and in matters that appertain to religion defiantly put aside the most sacred decrees of the Church. They claim jurisdiction over the marriages of Catholics, even over the bond as well as the unity and the indissolubility of matrimony. They lay hands on the goods of the clergy, contending that the Church cannot possess property. Lastly, they treat the Church with such arrogance that, rejecting entirely her title to the nature and rights of a perfect society, they hold that she differs in no respect from other societies in the State, and for this reason possesses no right nor any legal power of action, save that which she holds by the concession and favor of the government. If in any State the Church retains her own right—and this with the approval of the civil law, owing to an agreement publicly entered into by the two powers—men forthwith begin to cry out that matters affecting the Church must be separated from those of the State.

Their object in uttering this cry is to be able to violate unpunished their plighted faith, and in all things to have unchecked control. And as the Church, unable to abandon

her chiefest and most sacred duties, cannot patiently put up with this, and asks that the pledge given to her be fully and scrupulously acted up to, contentions frequently arise between the ecclesiastical and the civil power, of which the issue commonly is, that the weaker power yields to the one which is stronger in human resources.

Accordingly, it has become the practice and determination under this condition of public polity (now so much admired by many) either to forbid the action of the Church altogether, or to keep her in check and bondage to the State. Public enactments are in great measure framed with this design. The drawing up of laws, the administration of State affairs, the godless education of youth, the spoliation and suppression of religious orders, the overthrow of the temporal power of the Roman Pontiff, all alike aim at this one end—to paralyze the action of Christian institutions, to cramp to the utmost the freedom of the Catholic Church, and to curtail her every single prerogative.

Now, natural reason itself proves convincingly that such concepts of the government of a State are wholly at variance with the truth. Nature itself bears witness that all power, of every kind, has its origin from God, who is its chief and most august source.

The sovereignty of the people, however, and this without any reference to God, is held to reside in the multitude, which is doubtless a doctrine exceedingly well calculated to flatter and to inflame many passions, but which lacks all reasonable proof, and all power of insuring public safety and preserving order. Indeed from the prevalence of this teaching, things have come to such a pass that many hold as an axiom of civil jurisprudence that seditions may be rightfully fostered. For the opinion prevails that princes are nothing more than delegates chosen to carry out the will of the people; whence it necessarily follows that all things are as changeable as the will of the people, so that risk of public disturbance is ever hanging over our heads.

To hold therefore that there is no difference in matters of religion between forms that are unlike each other, and even

contrary to each other, most clearly leads in the end to the rejection of all religion in both theory and practice. And this is the same thing as atheism, however it may differ from it in name. Men who really believe in the existence of God must, in order to be consistent with themselves and to avoid absurd conclusions, understand that differing modes of divine worship involving dissimilarity and conflict even on most important points, cannot all be equally probable, equally good, and equally acceptable to God.

So, too, the liberty of thinking, and of publishing, whatsoever each one likes, without any hindrance is not in itself an advantage over which society can wisely rejoice. On the contrary it is the fountain-head and origin of many evils. Liberty is a power perfecting man, and hence should have truth and goodness for its object. But the character of goodness and truth cannot be changed at option. These remain ever one and the same, and are no less unchangeable than Nature herself. If the mind assents to false opinions, and the will chooses and follows after what is wrong, neither can attain its native fulness, but both [must] fall from their native dignity into an abyss of corruption. Whatever, therefore, is opposed to virtue and truth, may not rightly be brought temptingly before the eye of man, much less sanctioned by the favor and protection of the law. A well-spent life is the only passport to Heaven, whither all are bound, and on this account the State is acting against the laws and dictates of nature whenever it permits the license of opinion and of action to lead minds astray from truth and souls away from the practice of virtue. To exclude the Church, founded by God Himself, from the business of life, from the power of making laws, from the training of youth, from domestic society, is a grave and fatal error. A State from which religion is banished can never be well regulated; and already perhaps more than is desirable is known of the nature and tendency of the so-called civil philosophy of life and morals. The Church of Christ is the true and sole teacher of virtue and guardian of morals. She it is who preserves in their purity the principles from which duties flow, and by setting forth

most urgent reasons for virtuous life, bids us not only to turn away from wicked deeds, but even to curb all movements of the mind that are opposed to reason, even though they be not carried out in action.

To wish the Church to be subject to the civil power in the exercise of her duty is a great folly and a sheer injustice. Whenever this is the case, order is disturbed, for things natural are put above things supernatural; the many benefits which the Church, if free to act, would confer on society are either prevented or at least lessened in number; and a way is prepared for enmities and contentions between the two powers, with what evil result to both the issue of events has taught us only too frequently.

Doctrines such as these, which cannot be approved by human reason, and most seriously affect the whole civil order, Our predecessors the Roman Pontiffs (well aware of what their apostolic office required of them) have never allowed to pass uncondemned. Thus Gregory XVI in his Encyclical Letter *Mirari vos,* of date August 15, 1832, inveighed with weighty words against the sophisms, which even at his time were being publicly inculcated—namely, that no preference should be shown for any particular form of worship; that it is right for individuals to form their own personal judgments about religion; that each man's conscience is his sole and all-sufficing guide; and that it is lawful for every man to publish his own views, whatever they may be, and even to conspire against the State. On the question of the separation of Church and State the same Pontiff writes as follows: "Nor can We hope for happier results either for religion or for the civil government from the wishes of those who desire that the Church be separated from the State, and the concord between the secular and ecclesiastical authority be dissolved. It is clear that these men, who yearn for a shameless liberty, live in dread of an agreement which has always been fraught with good, and advantageous alike to sacred and civil interests." To the like effect, also, as occasion presented itself, did Pius IX brand publicly many false opinions which were gaining ground, and afterwards ordered them to be condensed in

summary form in order that in this sea of error Catholics might have a light which they might safely follow. It will suffice to indicate a few of them:

Prop. xix: "The Church is not a true, perfect, and wholly independent society, possessing its own unchanging rights conferred upon it by its Divine Founder; but it is for the civil power to determine what are the rights of the Church, and the limits within which it may use them." Prop. xxxix: "The State, as the origin and source of all rights enjoys a right that is unlimited." Prop. lv: "The Church must be separated from the State, and the State from the Church." Prop. lxxix: "It is untrue that the civil liberty of every form of worship, and the full power given to all of openly and publicly manifesting whatsoever opinions and thoughts, lead to the more ready corruption of the minds and morals of the people, and to the spread of the plague of religious indifference."

From these pronouncements of the Popes it is evident that the origin of public power is to be sought for in God Himself, and not in the multitude, and that it is repugnant to reason to allow free scope for sedition. Again, that it is not lawful for the State, any more than for the individual, either to disregard all religious duties or to hold in equal favor different kinds of religion: that the unrestrained freedom of thinking and of openly making known one's thoughts is not inherent in the rights of citizens, and is by no means to be reckoned worthy of favor and support. In like manner it is to be understood that the Church no less than the State itself is a society perfect in its own nature and its own right, and that those who exercise sovereignty ought not so to act as to compel the Church to become subservient or subject to them, or to hamper her liberty in the management of her own affairs, or to despoil her in any way of the other privileges conferred upon her by Jesus Christ. In matters, however, of mixed jurisdiction, it is in the highest degree consonant to nature, as also to the designs of God, that so far from one of the powers separating itself from the other, or still less coming into conflict with it, complete harmony, such as is suited to the end for which each power exists, should be preserved between them.

This then is the teaching of the Catholic Church concern-

ing the constitution and government of the State. By the words and decrees just cited, if judged dispassionately, no one of the several forms of government is in itself condemned, inasmuch as none of them contain anything contrary to Catholic doctrine, and all of them are capable, if wisely and justly managed, to insure the welfare of the State. Neither is it blameworthy in itself, in any manner, for the people to have a share, greater or less in the government: for at certain times, and under certain laws, such participation may not only be of benefit to the citizens, but may even be of obligation. Nor is there any reason why any one should accuse the Church of being wanting in gentleness of action or largeness of view, or of being opposed to real and lawful liberty. The Church indeed, deems it unlawful to place the various forms of divine worship on the same footing as the true religion, but does not, on that account, condemn those rulers who, for the sake of securing some great good or of hindering some great evil, allow patiently custom or usage to be a kind of sanction for each kind of religion having its place in the State. And in fact the Church is wont to take earnest heed that no one shall be forced to embrace the Catholic faith against his will, for, as St. Augustine wisely reminds us, "Man cannot believe otherwise than of his own free will."

In the same way the Church cannot approve of that liberty which begets a contempt of the most sacred laws of God, and casts off the obedience due to lawful authority, for this is not liberty so much as license, and is most correctly styled by St. Augustine the "liberty of self-ruin," and by the Apostle St. Peter *the cloak of malice*. (Peter ii, 16.) Indeed, since it is opposed to reason, it is a true slavery, *for whosoever committeth sin is the slave of sin.* (John viii, 34.) On the other hand, that liberty is truly genuine, and to be sought after, which in regard to the individual does not allow men to be the slaves of error and of passion, the worst of all masters; which, too, in public administration guides the citizens in wisdom and provides for them increased means of well-being; and which, further, protects the State from foreign interference.

This honorable liberty, alone worthy of human beings, the Church approves most highly and has never slackened her endeavor to preserve, strong and unchanged, among nations. And in truth whatever in the State is of chief avail for the common welfare; whatever has been usefully established to curb the license of rulers who are opposed to the true interests of the people, or to keep in check the leading authorities from unwarrantably interfering in municipal or family affairs—whatever tends to uphold the honor, manhood, and equal rights of individual citizens;—of all these things, as the monuments of past ages bear witness, the Catholic Church has always been the originator, the promoter, or the guardian. Ever therefore consistent with herself, while on the one hand she rejects that exorbitant liberty which in individuals and in nations ends in license or in thraldom, on the other hand, she willingly and most gladly welcomes whatever improvements the age brings forth, if these really secure the prosperity of life here below, which is as it were a stage in the journey to the life that will know no ending.

Therefore, when it is said the Church is jealous of modern political systems, and that she repudiates the discoveries of modern research, the charge is a ridiculous and groundless calumny. Wild opinions she does repudiate, wicked and seditious projects she does condemn, together with that habit of mind which points to the beginning of a wilful departure from God. But as all truth must necessarily proceed from God, the Church recognizes in all truth that is reached by research, a trace of the divine intelligence. And as all truth in the natural order is powerless to destroy belief in the teachings of revelation, but can do much to confirm it, and as every newly discovered truth may serve to further the knowledge or the praise of God, it follows that whatsoever spreads the range of knowledge will always be willingly and even joyfully welcomed by the Church. She will always encourage and promote, as she does in other branches of knowledge, all study occupied with the investigation of nature. In these pursuits, should the human intellect discover anything not known before, the Church makes no opposition. She never

objects to search being made for things that minister to the refinements and comforts of life. So far indeed from opposing these she is now, as she ever has been, hostile alone to indolence and sloth, and earnestly wishes that the talents of men may bear more and more abundant fruit by cultivation and exercise. Moreover she gives encouragement to every kind of art and handicraft, and through her influence, directing all strivings after progress towards virtue and salvation, she labors to prevent man's intellect and industry from turning him away from God and from heavenly things.

All this, though so reasonable and full of counsel, finds little favor nowadays when States not only refuse to conform to the rules of Christian wisdom, but seem even anxious to recede from them further and further on each successive day. Nevertheless, since truth when brought to light is wont, of its own nature, to spread itself far and wide, and gradually take possession of the minds of men, We, moved by the great and holy duty of Our apostolic mission to all nations, speak, as We are bound to do, with freedom. Our eyes are not closed to the spirit of the times. We repudiate not the assured and useful improvements of our age, but devoutly wish affairs of State to take a safer course than they are now taking, and to rest on a more firm foundation without injury to the true freedom of the people; for the best parent and guardian of liberty amongst men is truth. *The truth shall make you free.* (John viii, 32.)

If in the difficult times in which our lot is cast, Catholics will give ear to Us, as it behooves them to do, they will readily see what are the duties of each one in matters of opinion as well as action. As regards opinion, whatever the Roman Pontiffs have hitherto taught, or shall hereafter teach, must be held with a firm grasp of mind, and, so often as occasion requires, must be openly professed.

Especially with reference to the so-called "Liberties" which are so greatly coveted in these days, all must stand by the judgment of the Apostolic See, and have the same mind. Let no man be deceived by the outward appearance of these liberties, but let each one reflect whence these have had their

origin, and by what efforts they are everywhere upheld and promoted. Experience has made us well acquainted with their results to the State, since everywhere they have borne fruits which the good and wise bitterly deplore. If there really exist anywhere, or if we in imagination conceive, a State, waging wanton and tyrannical war against Christianity and if we compare with it the modern form of government just described, this latter may seem the more endurable of the two. Yet, undoubtedly, the principles on which such a government is grounded are, as We have said, of a nature which no one can approve.

Secondly, action may relate to private and domestic matters, or to matter public. As to private affairs, the first duty is to conform life and conduct to the gospel precepts, and to refuse to shrink from this duty when Christian virtue demands some sacrifice difficult to make. All, moreover, are bound to love the Church as their common mother, to obey her laws, promote her honor, defend her rights, and to endeavor to make her respected and loved by those over whom they have authority. It is also of great moment to the public welfare to take a prudent part in the business of municipal administration, and to endeavor above all to introduce effectual measures, so that, as becomes a Christian people, public provision may be made for the instruction of youth in religion and true morality. Upon these things the well-being of every State greatly depends.

Furthermore, it is in general fitting and salutary that Catholics should extend their efforts beyond this restricted sphere, and give their attention to national politics. We say in general, because these Our precepts are addressed to all nations. However, it may in some places be true that, for most urgent and just reasons, it is by no means expedient for Catholics to engage in public affairs or to take an active part in politics. Nevertheless, as We have laid down, to take no share in public matters would be equally as wrong (We speak in general) as not to have concern for, or not to bestow labor upon, the common good. And this all the more because Catholics are admonished, by the very doctrines which they

profess, to be upright and faithful in the discharge of duty, while if they hold aloof, men whose principles offer but small guarantee for the welfare of the State will the more readily seize the reins of government. This would tend also to the injury of the Christian religion, forasmuch as those would come into power who are badly disposed towards the Church, and those who are willing to befriend her would be deprived of all influence.

It follows therefore clearly that Catholics have just reasons for taking part in the conduct of public affairs.

For in so doing they assume not the responsibility of approving what is blameworthy in the actual methods of government, but seek to turn these very methods, so far as possible, to the genuine and true public good, and to use their best endeavors at the same time to infuse, as it were, into all the veins of the State the healthy sap and blood of Christian wisdom and virtue. The morals and ambitions of the heathens differed widely from those of the Gospel, yet Christians were to be seen living undefiled everywhere in the midst of pagan superstition, and, while always true to themselves, coming to the front boldly wherever an opening was presented. Models of loyalty to their rulers, submissive, so far as was permitted, to the sovereign power, they shed around them on every side a halo of sanctity; they strove to be helpful to their brethren, and to attract others to the wisdom of Jesus Christ, yet were bravely ready to withdraw from public life, nay, even to lay down their life, if they could not without loss of virtue retain honors, dignities, and offices. For this reason Christian ways and manners speedily found their way not only into private houses but into the camp, the senate, and even into the imperial palaces. "We are but of yesterday," wrote Tertullian, "yet we swarm in all your institutions, we crowd your cities, islands, villages, towns, assemblies, the army itself, your wards and corporations, the palace, the senate, and the law courts." So that the Christian faith when once it became lawful to make public profession of the Gospel, appeared in most of the cities of Europe, not like an infant

crying in its cradle, but already grown up and full of vigor.

In these our days it is well to revive these examples of our forefathers. First and foremost it is the duty of all Catholics worthy of the name and wishful to be known as most loving children of the Church, to reject without swerving whatever is inconsistent with so fair a title; to make use of popular institutions, so far as can honestly be done, for the advancement of truth and righteousness; to strive that liberty of action shall not transgress the bounds marked out by nature and the law of God; to endeavor to bring back all civil society to the pattern and form of Christianity which We have described. It is barely possible to lay down any fixed method by which such purposes are to be attained, because the means adopted must suit places and times widely differing from one another. Nevertheless, above all things, unity of aim must be preserved, and similarity must be sought after in all plans of action. Both these objects will be carried into effect without fail if all will follow the guidance of the Apostolic See as their rule of life and obey the bishops whom the Holy Ghost has placed to rule the Church of God. (Acts xx, 28.) The defence of Catholicism, indeed, necessarily demands that in the profession of doctrines taught by the Church all shall be of one mind and all steadfast in believing; and care must be taken never to connive, in any way, at false opinions, never to withstand them less strenuously than truth allows. In mere matters of opinion it is permissible to discuss things with moderation, with a desire of searching into the truth, without unjust suspicion or angry recriminations.

Hence, lest concord be broken by rash charges, let this be understood by all, that the integrity of Catholic faith cannot be reconciled with opinions verging on Naturalism or Rationalism, the essence of which is utterly to sterilize Christianity, and to install in society the supremacy of man to the exclusion of God. Further, it is unlawful to follow one line of conduct in private and another in public, respecting privately the authority of the Church, but publicly rejecting it; for this would amount to joining together good and evil, and

to putting man in conflict with himself; whereas he ought always to be consistent, and never in the least point nor in any condition of life to swerve from Christian virtue.

But in matters merely political, as for instance the best form of government, and this or that system of administration, a difference of opinion is lawful. Those, therefore, whose piety is in other respects known, and whose minds are ready to accept in all obedience the decrees of the Apostolic See, cannot in justice be accounted as bad men because they disagree as to subjects We have mentioned; and still graver wrong will be done them, if—as We have more than once perceived with regret—they are accused of violating, or of wavering in, the Catholic faith.

Let this be well borne in mind by all who are in the habit of publishing their opinions, and above all by journalists. In the endeavor to secure interests of the highest order there is no room for internal strife or party rivalries; since all should aim with one mind and purpose to make safe that which is the common object of all—the maintenance of Religion and of the State. If, therefore, there have hitherto been dissensions, let them henceforth be gladly buried in oblivion. If rash or injurious acts have been committed, whoever may have been at fault, let mutual charity make amends, and let the past be redeemed by a special submission of all to the Apostolic See.

In this way Catholics will attain two most excellent results: they will become helpers to the Church in preserving and propagating Christian wisdom; and they will confer the greatest benefit on civil society, the safety of which is exceedingly imperilled by evil teachings and bad passions.

This, Venerable Brethren, is what We have thought it Our duty to expound to all nations of the Catholic world touching the Christian constitution of States and the duties of individual citizens.

It behooves Us now with earnest prayer to implore the protection of Heaven, beseeching God, who alone can enlighten the minds of men and move their will, to bring about those happy ends for which We yearn and strive, for His greater

glory and the general salvation of mankind. As a happy augury of the divine benefits, and in token of Our paternal benevolence, to you, Venerable Brothers, and to the clergy and to the whole people committed to your charge and vigilance, We grant lovingly in the Lord the Apostolic Benediction.

AUTHORS AND EDITIONS OF BOOKS REFERRED TO

The material taken from magazines and books is copyrighted by the publishers thereof, and all rights are reserved to the owners of the copyrights.

Acton, J. E. E. D., First Baron Acton: *Letters of Lord Acton to Mary Gladstone.* Edited, with an Introductory Memoir, by H. Paul (New York, 1905).

Selections from the Correspondence of the First Lord Acton. Vol. i: Correspondence with Cardinal Newman, Lady Blennerhassett, W. E. Gladstone and others. Edited with an introduction by J. N. Figgis and R. V. Laurence (London, 1917).

The History of Freedom and Other Essays. Edited with an introduction by J. N. Figgis and R. V. Laurence (London, 1919).

Historical Essays and Studies. Edited by J. N. Figgis and R. V. Laurence (London, 1926).

Aquinas, St. Thomas: *Summa Theologica.* Translated by Fathers of the English Dominican Province, Part II, second part, vol. ix (London, 1917). Imprimatur of Fr. Beda Jarrett, Prior *Provincialis Angliæ.*

Ayrinhac, H. A.: *Marriage Legislation in the New Code of Canon Law* (New York, 1918). Imprimatur of John Cardinal Farley.

Belloc, Hilaire: *The Contrast* (New York, 1924).

Bryce, James: *The Holy Roman Empire* (New York, 1914).

Burgess, John W.: *Political Science and Comparative Constitutional Law* (Boston, 1912).

The Sanctity of Law—Wherein does it consist? (Boston, 1927).

Cambridge Modern History, The: Edited by A. W. Ward, G. W. Prothero, Stanley Leathes. 13 vols. (New York, 1907–1911).

Carlyle, R. W. and A. J.: *A History of Mediæval Political Theory in the West.* 4 vols.

Vol. i: The Second Century to the Ninth (New York, 1903).

Vol. ii: The Political Theory of the Roman Lawyers and the Canonists, from the Tenth Century to the Thirteenth Century (New York, 1909).

Vol. iv: The Theories of the Relation of the Empire and the Papacy from the Tenth Century to the Twelfth (New York, 1922).

Catholic Encyclopedia, The: 15 vols. and Index. An International Work of Reference on the Constitution, Doctrine, Discipline, and History of the Catholic Church. Edited by Charles G. Herbermann, PH.D., LL.D., Edward A. Pace, PH.D., D.D., Condé B. Pallen, PH.D., LL.D., Thomas J. Shahan, D.D., John J. Wynne, S.J., assisted by numerous collaborators (New York, 1907–1914). Imprimatur of John Cardinal Farley, Archbishop of New York.

Charles, R. H.: *Divorce and the Roman Dogma of Nullity* (Edinburgh, 1927).

Christian Doctrine, Exposition of: (By a Seminary Professor) 3 vols. Part I: Dogma. Seventh Edition, containing Brief of Pope Leo XIII, dated 1895. Authorized English version (Philadelphia, John Joseph McVey, 1926). Imprimatur of Patritius Joannes, Archbishop of Philadelphia.

Christian Doctrine, Manual of: (By a Seminary Professor) I vol. Comprising Dogma, Moral, and Worship. Authorized English version. "Revised in accordance with the code of 1918." Forty-eighth Edition (Philadelphia, John Joseph McVey, 1926). Imprimatur of D. J. Dougherty, Archbishop of Philadelphia.

Creighton, Mandell: *A History of the Papacy from the Great Schism to the Sack of Rome.* 6 vols. (London, 1907).

Dante: *De Monarchiâ.* Edited by Dr. E. Moore with an Introduction . . . by W. H. V. Reade (Oxford University Press, 1916).

Davis, John P.: *Corporations.* A Study of the Origin and Development of Great Business Combinations and of their Relation to the Authority of the State. 2 vols. (New York, 1905).

De Maistre, Count Joseph: *The Pope;* considered in His Relations with the Church, Temporal Sovereignties, Separated Churches and the Cause of Civilization. Translated by the Rev. Aeneas McD. Dawson (London, 1850).

Dogmatic Canons and Decrees: Authorized Translations of the Dogmatic Decrees of the Council of Trent, the Decree on the Immaculate Conception, the Syllabus of Pope Pius IX, and the Decrees of the Vatican Council (New York, 1912). Imprimatur of John Cardinal Farley, Archbishop of New York.

Döllinger, J. J. I. von: (See also Janus) *Kirche und Kirchen, Papsttum und Kirchenstaat* (Munich, 1861).

Duchesne, Louis: *The Beginnings of the Temporal Sovereignty of the Popes,* A. D. 754–1073. Translated by A. H. Mather (London, 1907).

Early History of the Christian Church. Translated by Claude Jenkins. 3 vols. Second Edition (New York, 1922–1926).

Dunning, William A.: *A History of Political Theories.* 4 vols.

Vol. i: Ancient and Mediæval (New York, 1923).

Vol. ii: From Luther to Montesquieu (New York, 1923).

Emerton, Ephraim: *The Defensor Pacis of Marsiglio of Padua* (Harvard University Press, 1920).

Encyclical Letters of Pope Leo XIII, The Great: Translations from Approved Sources, with Preface by Rev. J. J. Wynne, S.J. (New York, 1903). Imprimatur of John M. Farley, Archbishop of New York.

Encyclopædia Britannica, The: 29 vols. Eleventh Edition (New York, 1910–1911).

Exposition of Christian Doctrine: (By a Seminary Professor) *vide supra Christian Doctrine, Exposition of*

Figgis, John N.: *The Divine Right of Kings.* Second Edition (Cambridge University Press, 1922).

Freund, Ernst: Professor of Law, University of Chicago, *The Police Power, Public Policy and Constitutional Rights* (Chicago, 1904).

Froude, J. A.: *History of England.* 12 vols. (New York, 1871).

Gasquet, F. A. (Cardinal): *Lord Acton and His Circle* (London, 1906).

Gibbon, Edward: *The History of the Decline and Fall of the Roman Empire.* 6 vols. (New York, Harper Bros., probably 1845).

Gibbons, James Cardinal: *The Church and The Republic* (The North American Review, March, 1909).

Gierke, Otto: *Political Theories of the Middle Age.* Translated with an Introduction by F. W. Maitland (Cambridge University Press, 1922).

Goldast, M.: *Monarchiæ S. Romani Imperii* (Frankfurt, 1611–1614).

Grisar, Hartmann: *Luther.* 6 vols. Authorized translation from the German by E. M. Lamond. Edited by Luigi Cappadelta (London, 1914–1917).

Guthrie, W. D.: *Opinion to the American Hierarchy on Church and State in Mexico* (New York Times, December 5, 1926).

Hall, F. J.: *Dogmatic Theology.* 10 vols. (New York, 1921).

Hamilton, Alexander: *The Federalist,* No. 28. Edited by Henry Cabot Lodge (New York, 1894).

Hayes, C. J. H.: *Leo X* (Encyclopædia Britannica, vol. xvi, p, 433).

Janus (J. J. I. von Döllinger): *The Pope and the Council.* Second Edition. Authorized translation from the German (London, 1869).

Jefferson, Thomas: *The Writings of Thomas Jefferson.* Collected and Edited by Paul Leicester Ford. 12 vols. (New York, 1892).

Joyce, G. H.: *The Pope* (Catholic Encyclopedia, vol. xii, p. 260).

Kohlsaat, H. H.: *From McKinley to Harding* (New York, 1923).

Laski, Harold J.: *Authority in the Modern State* (Yale University Press, 1919).

The Foundations of Sovereignty and Other Essays (New York, 1921).

Studies in the Problem of Sovereignty (Yale University Press, 1924).

Lindner, D.: (Priest of the Diocese of Regensburg). *Die Lehre vom Privileg nach Gratian und den Glossatoren des Corpus juris canonici* (Regensburg, 1917). Imprimatur of the Vicar General of Ratisbon.

Lowndes, Arthur: *Vindication of Anglican Orders.* 2 vols. Third Edition (New York, 1911).

Loyola, St. Ignatius: *The Spiritual Exercises of St. Ignatius Loyola.* Spanish and English. Commentary by Joseph Rickaby, S. J. Second Edition (New York, 1923).

Luchaire, A.: *The Papacy: 1087–1305* (Encyclopædia Britannica, vol. xx, pp. 691–700).

Lucantonio, Ludovico Sac. Dott.: *La Supernazionalità del Papato* (Rome, 1924).

Macaulay, Thomas B.: *Critical, Historical, and Miscellaneous Essays and Poems.* 3 vols. (New York, 1880).

Macksey, Charles: *State and Church* (Catholic Encyclopedia, vol. xiv, p. 250–254).

Maine, Henry S.: *Early History of Institutions* (New York, 1875).

Manning, Henry Edward Cardinal, Archbishop of Westminster: *Sermons on Ecclesiastical Subjects.* American Edition. 2 vols. (New York, 1873).

Manual of Christian Doctrine: (By a Seminary Professor) *vide supra Christian Doctrine, Manual of*

Maryland, Archives of: (1637–1664). Edited by William Hand Browne (Baltimore, 1883).

Mercier, Désiré Cardinal: *Pastoral Letter on the Election of His Holiness, Pope Pius XI.*

Merry del Val, Raphael, Archbishop of Nicæa: *The Truth of Papal Claims* (London, 1902). Imprimatur of Herbert Cardinal Vaughan, Archbishop of Westminster.

Mexico: See W. D. Guthrie; also Pastoral Letter of the Catholic Episcopate in the United States.

Millar, M. F. X.: See J. A. Ryan.

Milton, John: *Areopagitica* (New York, Putnam's Ariel Booklets).

Mirbt, D. Carl: *Quellen zur Geschichte des Papsttums und des Römischen Katholizismus.* Fourth Edition (Tübingen, J. C. B. Mohr (Paul Siebeck) 1924).

Modernism, The Programme of: A Reply to the Encyclical of Pius X., *Pascendi Dominici Gregis.* Translated from the Italian by Rev. Father George Tyrrell, with an Introduction by A. Leslie Lilley (New York, 1908).

Montalembert, Comte de: Letter to *The Times,* London, March 7, 1870.

Moon, P. T.: *The Labor Problem and the Social Catholic Movement in France*—A Study in the History of Social Politics (New York, 1921).

Moore, Edward: *Studies in Dante.* Second Series. Miscellaneous Essays (Oxford, 1889).

Moore, John Bassett: *A Digest of International Law* (Washington, 1906).

Motley, J. L.: *The Rise of the Dutch Republic.* 3 vols. (New York, 1855).

Newman, John Henry Cardinal: *Certain Difficulties felt by Anglicans in Catholic Teaching* considered: . . . in a letter addressed to the Duke of Norfolk, on occasion of Mr. Gladstone's Expostulation of 1874. 2 vols. (London, 1918–1920).

Pastor, L.: *Geschichte der Päpste.* 12 vols. (Freiburg, 1895–1927).

Pastoral Letter of the Catholic Episcopate of the United States on the Religious Situation in Mexico. Published by the Committee of the American Episcopate (New Haven, 1927).

Petre, M. D.: *Autobiography and Life of George Tyrrell.* 2 vols.

Vol. i: Autobiography of George Tyrrell, 1861–1884;

Vol. ii: Life of George Tyrrell, from 1884 to 1909. Second Impression (London, 1912).

Petrovits, J. J. C.: *The New Church Law on Matrimony.* Second Edition (Philadelphia, 1926). Imprimatur of D. Cardinal Dougherty, Archbishop of Philadelphia.

Philippine Islands: See Senate Document No. 190, 56th Congress, 2d. session.

Pohle, J.: *Religious Toleration* (Catholic Encyclopedia, vol. xiv, pp. 763–773).

Pollard, A. F.: *Henry VIII* (London, 1905).

Ranke, L. von: *History of the Popes.* Translated by E. Fowler (New York, 1901).

Raulx, M. L'Abbé: *Encyclique et Documents en Français & en Latin.* 2 vols. Second Edition (Bar-le-duc, L. Guérin, Éditeur, 1865).

Raymond, Henry J.: *History of the Administration of President Lincoln* (New York, 1864).

Rickaby, J.: *The Spiritual Exercises of St. Ignatius Loyola.* Spanish and English. Second Edition (New York, 1923).

Rockwell, W. W.: *The Papacy: 1590–1870* (Encyclopædia Britannica, vol. xx, pp. 711–717).

Ross, J. Elliot: *Christian Ethics—The Book of Right Living* (New York, 1926). Imprimatur of Patrick Cardinal Hayes, Archbishop of New York.

Ryan, John A., and Moorhouse F. X. Millar: *The State and the Church.* Written and Edited for the Department of Social Action of the National Catholic Welfare Council (New York, 1922). Imprimatur of Patrick J. Hayes, Archbishop of New York.

Senate Document No. 190, 56th Congress, 2d session. *Lands Held for Ecclesiastical or Religious Uses in the Philippine Islands, etc.* February 25, 1901. Message from President McKinley transmitting: "In response to resolution of the Senate of January 26, 1901, a report from the Secretary of War, with accompanying papers, relative to the lands held in mortmain or otherwise for ecclesiastical or religious uses in the Philippine Islands;

also transmitting certified copies of the acts of the Philippine Commission, numbers 56 to 68, inclusive."

Shuster, George N.: *The Catholic Spirit in America* (New York, 1927).

Smith, Hon. Alfred E.: *Catholic and Patriot* (Atlantic Monthly, May, 1927).

Smith, Preserved: *The Age of the Reformation* (New York, 1920).

State Court Reports: Illinois Supreme Court, 58 Illinois 509, Chase *vs.* Cheney; Kentucky Court of Appeals, 68 Kentucky 110, Gartin *vs.* Penick.

Tyrrell, George: *Autobiography and Life of;* (see Petre)

United States Supreme Court Reports:

80 United States 679 Watson *vs.* Jones
94 United States 113 Munn *vs.* State of Illinois
108 United States 526 Ruggles *vs.* State of Illinois
113 United States 27 Barbier *vs.* Connolly
123 United States 623 Mugler *vs.* State of Kansas
136 United States 1 The Late Corporation of the Church of Jesus Christ of Latter Day Saints *vs.* United States
150 United States 145 The Late Corporation of the Church of Jesus Christ of Latter Day Saints *vs.* United States
193 United States 197 United States vs. Northern Securities Co.
210 United States 296 City of Ponce *vs.* The Roman Catholic Church
221 United States 1 Standard Oil Co. vs. United States
262 United States 390 Meyer *vs.* State of Nebraska
262 United States 404 Bartels *vs.* State of Iowa.
262 United States 404 Bohning *vs.* State of Ohio
262 United States 404 Pohl *vs.* State of Ohio
268 United States 510 Pierce (Governor of Oregon) *vs.* The Society of Sisters; *vs* Hill Military Academy.

Vaughan, Herbert M.: *The Medici Popes* (Leo X and Clement VII). (London, 1908).

Wilmers, W.: *Handbook of the Christian Religion.* Edited by Rev. J. Conway, S.J. Revised according to the New Code of Canon Law (New York, 1921). Imprimatur of Patrick J. Hayes, Archbishop of New York.

Wilson, Woodrow: *A History of the American People.* 5 vols. (New York, 1902).

Wirgman, A. Theodore: *The Constitutional Authority of Bishops in the Catholic Church.* Illustrated by the History and Canon Law of the Undivided Church from the Apostolic Age to the Council of Chalcedon, A. D. 451 (London, 1899).

Woywod, Stanislaus: *A Practical Commentary on the Code of Canon Law.* With a Preface by Rt. Rev. Msgr. P. Bernardini. 2 vols. (New York, 1925). Imprimatur of Patrick Cardinal Hayes, Archbishop of New York.

Young, G. F.: *The Medici,* 2 vols. (New York, 1913).

INDEX

Absolutism, 11, 36 n. 43, 67, 152-3, 158, 168-9, 175, 187 and n. 11.
Action Française, 252, 254-6.
Acton, Lord, 2, 6 n. 12, 28 n. 21, 35 n. 42, 67-9, 71-2, 74, 81 n. 14, 91 n. 9, 151, 152 n. 13, 232.
Adrian IV, Pope, 244.
Adultery, 235.
Æterni Patris, 164.
Affinity, 230 and n. 13.
Albigenses, 28.
Alexander IV, Pope, 29 n. 24.
Alexander V, Pope, 167.
Alexander VI, Pope, 231.
Alessandro the Moor, 242.
Allegiance, 132, 141, 164, 166.
America, 2 n. 3, 90 n. 7.
Anarchy, 129, 139.
Anglican Church, 10, 162, 223, 235.
Annulments, 230, 236-8, 241.
Antonelli, Cardinal, 81, 84.
Aquinas, St. Thomas, 22 n. 12, 28, 29 n. 24, 158 n. 29, 161, 164-6, 259-260.
Association and Separation Laws of France, 200, 214 n. 16.
Atheism, 118, 119.
Atlantic Monthly, see A. E. Smith.
Augsburg, 191 n. 22.
Austria, 79.
Authority; *see* Sovereignty; Jurisdiction.
Ayrinhac, H. A., 185, 225 n. 3.

Bacon, Francis, 184.
Baltimore, *see* Maryland.
Barbier *vs.* Connolly, 203 n. 11.
Bartels *vs.* State of Iowa, 263.
Belloc, Hilaire, 13, 37, 190.
Benedict IX, Pope, 145.
Benedict XV, Pope, 117, 169 n. 52.
Bishops, 60, 112 and n. 35, 149-151.
Bishop of Rome, 6, 76, 154.
Blackwood's Magazine, 176.
Blood, shedding of, 28, 29.
Bohning *vs.* State of Ohio, 263.
Boleyn, Anne, 241.
Boniface VIII, Pope, 24, 26, 28, 29 n. 24, 98, 160 and n. 24, 183.
Borgia Pope, 145.
  Cæsar, 232; Lucretia, 232.
Boudinhon, Dr. A., 82.
Bruno, 184.
Bryce, James, 22 n. 12, 97 n. 19, 99 n. 27, 146, 152, 153 n. 15, 160 n. 33, 186, 201.
Burgess, John W., 24 n. 14, 94 n. 16, 203 n. 11.

Cæsar, 5, 6, 11.
Calvin, John, 235.
Calvinism, 10, 186.
Canon Law, 159, 169-180, 266.
  Code of, 61 n. 11, 169 n. 52, 226, 227 and n. 7.
Canterbury, 185, 242.
Cardinals, 155-6, 163, 166.
Carlyle, R. W. and A. J., 6 n. 10, 97 n. 18, 149 n. 4, 155, 174.
Catherine de Medici, 242.

Catherine of Aragon, 240.
Censorship, 142-3.
Censure, *see* Penalties.
Charlemagne, 24 n. 15, 76 n. 1, 97, 246.
Charles V, Emperor, 242.
Charles of Anjou, 245.
Charles, Dr. R. H., 230 n. 13.
Chase *vs.* Cheney, 204-5.
Chesterton, G. K., 2.
Childeric, King, 76 n. 1.
Christian Brothers Schools, 29 n. 26, 75 n. 42, 267-274.
Christian Doctrine, Manual of, 225 n. 3, 247 and n. 6, 267-274.
Exposition of, 29 n. 26.
Church, Divine mission of, 4-5.
Church and State, *see* State and Church.
Citizens, *see* Civic Primacy of the People.
Civic Primacy of the People, 1, 9, 13, 19, 78, 80, 134-5, 144, 147, 179, 200, 208, 245, 248, 253-4, 256, 280.
see also Sovereignty of the People.
Clement IV, Pope, 29 n. 24, 245.
Clement VII, Pope, 241, 242.
Clergy, 63, 98, 149 n. 4, 207, 213, 216-7.
see also Bishops.
Commandments, Ten, 235.
Conciliar struggle, 166-168.
Concordats, 102, 178.
Concubinage, 233 and n. 16, 234.
Connecticut, toleration in, 118 n. 3.
Consanguinity, 230 and n. 13.
Conscience, 12, 20, 21, 38-9, 42, 105, 108, 132, 136, 140, 181-191, 243, 280.
Consciousness, free, 12, 42, 109, 112, 139, 140, 189, 195, 280.
Constance, Five Articles of, 167-8.
General Council of, 167-8.
Constantine, Donation of, 179, 259.
Emperor, 5, 6 and n. 10, 211-2, 259.
Constitutional amendments, 45-6, 133.
limitations, 35-6, 136, 171-2.
Constitutions, Church and State, 78, 169, 170, 172, 202, 209, 210, 215, 261.
Copernicus, 184, 260.
Corporations, 6 n. 11, 203-208, 211.
Corpus juris canonici, see Canon Law.
Councils, Ecumenical, 61, 168.
General, 164-6, 168.
power of, 167-8, 168 n. 51.
see also Constance, Lyons, Pisa, Councils of.
Creighton, Mandell, 98 n. 22, 151 n. 11, 160 n. 34.

d'Ailly, Cardinal Pierre, 165.
Damnation, 26, 39, 57, 60, 196.
Dante, 161 n. 36, 165.
Darboy, Bishop, 69 n. 24.
Daudet, Leon, 176-7, 252.
Davis, John P., 6 n. 11.
Declaration of Independence, 103, 280.
Decretals, Pseudo-Isidorian, 179.
Defectives, extirpation of, 190.
Defensor Pacis of Marsiglio of Padua, 22 n. 12, 162.
De Fide Catholica, 35 n. 41, 171.
De Maistre, Count Joseph, 1, 6 n. 13, 147.
Democracy, 25, 42, 93, 104, 106, 115, 149, 157, 162-3, 180, 251.
De Monarchia of Dante, 161, 165.
Diepenbrock, Cardinal Prince Bishop of, 165.

Diocesan system of Rome, 148-153.
Diocese of Rome, 155, 163.
Dioclea, 27 n. 17, 151 and n. 12.
Dispensations, 173, 175, 230-1. *see also* Privileges.
Divine Revelation, *see* Revelation.
Divorce, 223-243.
Dogmatic Commission of the Vatican Council, *see* Vatican Council.
Dogmatic Constitution on the Church of Christ, First, *see Pastor Æternus.*
Döllinger, Dr. J. J. I. von, 13, 69, 78 n. 3, 166. *see also* Janus.
Dowling, Archbishop, 55 n. 28.
Dred Scott Case, 44.
DuBois, Cardinal Archbishop, 253-6.
Duchesne, Louis, 6 n. 10 and 12, 76 n. 1.
Dunning, William A., 17 n. 3, 98 n. 20, 164.

Ecuador, 120 n. 5.
Education, 3, 29 n. 26, 52, 74, 75 n. 42, 124, 142, 246-7 and n. 6, 258-278.
Electorate of Roman Catholic Church, 40-1, 44-6, 48-50, 54, 128, 133, 138.
of State, 116, 136.
see also Civic Primacy of the People; Sovereignty of the People.
Elizabeth, Queen, 72, 98, 241.
Emerton, Ephraim, 22 n. 12, 158 n. 29, 163 n. 37, 164.
Encyclical Letters, Authority of, 89-90.
Episcopate, 10, 11 n. 23, 73.
Error, 130, 131 n. 11, 144, 193-4.
Excommunication, 26, 27 n. 17, 72-3, 80, 140, 164, 247.
Exemptions, *see* Dispensations; Privileges.
Expediency, 45, 119, 132.

Faith, Profession of, *see* Profession of Faith.
Farnese, Ottavio, 242.
Felton, John, 2 n. 3.
Fénelon, 91 n. 9.
Figgis, John N., 22 n. 12.
Fitzgerald, Bishop Edward, 69 n. 24.
Force, right to use, 27-8, 32.
Fountain, Rev. Charles H., 147 n. 28.
France, 77, 79, 99, 117, 126, 176, 178, 200, 209, 214, 239, 250-257.
Fraud, 235, 239.
Frederick II, Emperor, 157, 160 and n. 33.
Freedom, religious, *see* Liberty, religious.
Freund, Prof. Ernst, 120 n. 6, 203 n. 11.
Friars in the Philippines, 92 n. 13.
Froude, J. A., 241 n. 25, 242 n. 19.
Fumasoni-Biondi, P., Archbishop, 27 n. 17, 151 n. 12.
Furrow, The, *see Sillon, Le.*

Galileo, 184.
Gartin *vs.* Penick, 206.
Gasparri, Cardinal, 27 n. 17, 188 n. 14.
Gasquet, Cardinal, 72 n. 36.
Gelasius I, Pope, 23, 97.
Geneva, 185.
German Empire, 41, 200, 214.
Gerson, 165.
Gibbon, Edward, 152 and n. 14.
Gibbons, James Cardinal, 38, 39 n. 2, 56 n. 29, 92 n. 13, 198, 201.

Gierke, Otto, 22 n. 12, 164.
Gladstone, W. E., 71.
Goldast, M., 99 n. 25.
Government by the consent of the governed, 19, 25, 86, 136, 169, 245-6.
Gratian, 173, 179.
Gregory VI, Pope, 145.
Gregory VII, Pope, 24, 92, 97, 144, 201.
Gregory XI, Pope, 166.
Gregory XIII, Pope, 72, 111.
Gregory XVI, Pope, 108, 187, 259.
Grisar, Hartmann, 146 n. 25.
Guthrie, William D., 92 n. 13, 220 and n. 26, 263.

Habsburg, Rudolf of, 158.
Hall, Rev. Francis J., 223.
Hamilton, Alexander, 39 n. 3, 194 n. 28.
Hanna, Archbishop, 182 n. 5.
Hayes, Prof. C. J. H., 145 n. 23.
Hefele, Bishop, 69 n. 24.
Henry III, 145.
Henry IV, Emperor, 157, 201.
Henry VII, King, 240.
Henry VIII, King, 98, 241.
Heresy, 22, 28-9, 167, 260.
Heretics, 28, 29 and n. 24, 72, 99, 111, 129, 163, 165, 184, 191.
Hergenröther, Cardinal, 172.
Hickey, Bishop, 27 n. 17.
Hierarchy, American, 116, 125, 263.
Hilgers, Joseph, S.J., 4.
Hohenstaufen, 26.
Hohenzollerns, 79.
Holmes, Mr. Justice, 264.
Holy Roman Empire, 7, 22 n. 12, 24 n. 15, 26, 97 and n. 19, 98, 157, 160 n. 34, 161-2, 183, 186, 259.
Howard, E. D., Archbishop, 159 n. 31.
Huguenots, 72.
Huxley, 118.

Immaculate Conception, dogma of, 171 n. 59, 279 n. 1.
Immortale Dei, 2 n. 3, 10, 31, 88-113, 114-147, 165, 198.
Incarnation, 279 n. 1.
Indifferentism, 194-5.
Indulgences, *see* Dispensations; Privileges.
Infallibility, 4, 57, 62, 63, 64-66, 71, 194 n. 28, 279 and n. 1.
Innocent III, Pope, 24-5, 28, 98, 111, 144, 157, 160, 201, 245, 252, 259.
Innocent IV, Pope, 30.
Innocent X, Pope, 99, 186.
Inquisition, 28, 71, 165, 200, 260.
Instruction, religious, *see* Education.
Interdict in Mexico, 215-6.
Intolerance, 104-106, 127-134, 191-197.
Ireland, 244.
Ireland, Archbishop, 55 n. 27.
Islam, 9.
Italy, 76, 78-80, 120 n. 5, 126, 200-1, 209, 214, 246.

Janus, 13, 27 n. 19, 145 n. 20, 21, 165 n. 48, 180 n. 84, 187 n. 11, 218 n. 22.
see also J. J. I. von Döllinger.
Jefferson, Thomas, 118 n. 3, 131 n. 11, 280.
Jesus Christ, 11, 18, 36, 118 n. 3, 164, 169, 173, 179, 188 n. 14, 233 n. 16, 247 n. 8, 279.
Jewish Theocracy, 5.
John, King, 11, 245.
John of Gaunt, 240.
John XII, Pope, 145.
John XXII, Pope, 162.

John XXIII, Pope, 151 n. 11.
Joyce, George H., S.J., 3.
Julius II, Pope, 183, 240.
Julius III, Pope, 46.
Jurisdiction, 47, 49, 51, 59, 61-2, 66, 68.
Juristic personality, 214, 222.

Keys, power of, 7, 24, 95.
Kohlsaat, H. H., 92 n. 13.
Kulturkampf, 41, 200, 214 n. 15.

Lactantius, 279 n. 1.
l'Action Française, 176, 252.
Laity, status of, 16 n. 1, 158-9, 162-3.
Land, *see* Property.
Laski, Harold J., 10, 28, 40 n. 4, 41 n. 6, 138, 142, 143, 186.
Law, constitutional, 178.
  Divine, 169-170, 247.
  natural, 170, 274.
  positive, 170, 172, 274.
  see also Canon Law; Jurisdiction; Sovereignty.
Lawgiver, Nazarene, 5.
Leo III, Pope, 76 n. 1, 97.
Leo X, Pope, 156, 242.
Leo XIII, Pope, 8, 10, 21 n. 9, 25, 30-1, 88, 92 n. 13, 165, 182, 188-9, 198-201, 228, 233, 247, 249-251, 260, 268.
L'Europe Nouvelle, 54 n. 25, 109 n. 32, 177.
Lewis the Bavarian, 162.
Lewis XII, King, 232.
Liberalism, 77-9, 189.
Libertas Præstantissimum, 93, 96 n. 17, 99 n. 28, 107 n. 31, 109 n. 32.
Liberty, religious, 40 n. 5, 104, 109, 118, 120, 143-4, 204-6.
Licentiousness, 205, 262.
Lincoln, Abraham, 15, 17, 136, 179.
Lindner, D., 174 n. 65, 175.
Lippmann, Walter, 80 n. 10.
Longinque Oceani, 125 n. 8.
Lowndes, Arthur, D.D., 98 n. 24.
Loyola, St. Ignatius, 189, 260.
Lucantonio, Ludovico, 188 n. 14.
Luchaire, Achille, 153, 180.
Luther, Martin, 28 n. 21, 146, 183-4, 235.
Lyons, Second Council of, 33.

Macaulay, Thomas B., 176.
Macksey, Charles, S.J., 46-54.
Magisterium, 75, 90, 91 n. 9.
Magna Charta, 111.
Main Street, 233, 242.
Maine, Henry S., 17 n. 3.
Majorities, 249.
Manning, Henry Edward Cardinal, 1, 3, 5, 41, 73-4.
Marconi case, 235-7.
Margaret of Parma, 242.
Marlborough case, 237-9.
Marriage, 142, 223-243.
Marsilius of Padua, 22 n. 12, 161-3, 165-6.
Martin V, Pope, 167-8.
Maryland, 118 n. 3.
Massachusetts, 118 n. 3.
Matilda of Tuscany, Countess, 76 n. 1, 246.
Matrimony, *see* Marriage.
Maurras, Charles, 176-7, 252.
Medici Popes, 145.
Membership, Church and State, 22, 40 and n. 5, 48-50, 68, 101, 205.
Mercier, Désiré Cardinal, 189.
Merry del Val, Raphael Cardinal, 4, 63-6.
Mexico, 2, 32 n. 34, 92 n. 13, 200, 202, 209, 214-222.
Meyer *vs.* State of Nebraska, 263-4.

Middle Ages, 21, 22 n. 12, 24, 28, 147, 160, 164, 166, 184, 186-7, 201, 213, 258.
Millar, M. F. X., *see* John A. Ryan.
Milton, John, 130 n. 11.
Mirari vos, 108, 187 n. 11.
Mirbt, D. Carl, 35 n. 41, 187 n. 12.
Modernism, 147 n. 28.
Mohammed, 9, 118 n. 3, 123.
Monarchy, 5-9, 15-26, 114, 148-180.
Montalembert, Comte de, 69, 109 n. 32.
Moon, Parker T., 250 n. 12.
Moore, Edward, 7, 161 n. 35, 165.
Moore, John Bassett, 80 n. 10.
Morals, 3, 4, 43, 46, 51-2, 60, 67-8, 91, 110, 135, 138, 140-2, 144-6, 171, 195, 199, 203, 205, 234-5, 253, 258, 262, 275.
Mormon Church, 10, 110, 206 and n. 24, 207, 219 n. 25, 229-230.
Mortalium Animos, 279 and n. 1.
Mortmain, 213 and n. 9, 217.
Motley, John L., 242 n. 32.
Mugler *vs.* State of Kansas, 204 n. 16.
Munn *vs.* State of Illinois, 204 n. 15.

Napoleon III, 79, 82.
Nationalism, 166, 183, 186.
Navarre, Prince Henry of, 99.
Newman, John Henry Cardinal, 10, 20 n. 7, 69, 70, 91 n. 9.
Nicholas of Cusa, Cardinal, 165.
Nicholas II, Pope, 155, 157.
Nicholas IV, Pope, 29 n. 24.
Non-expedit, 248.
Northern Securities case, 203.

Obedience, 20, 40, 60, 135, 140-1, 182, 190, 248-9.
O'Connell, Cardinal, 55 n. 26.
Omnipotence of the Church, 9, 136, 189.
of the State, 9, 134-6, 189.
Otto I, Emperor, 98, 145.
Otto IV, Emperor, 201.

Palma, 78.
Papal States, *see* States of the Church.
Paris, Treaty of, 8, 221 n. 27.
Pascendi Dominicis Gregis, 147 n. 28.
Passau, Treaty of, 186.
Pastor Æternus, Constitution, 9, 20-1, 35 n. 40, 41, 57-73, 154, 165-6, 171, 182, 190, 193.
Pastor, L., 242 n. 31.
Pastoral Letter on Mexico, 218, 219 and n. 24, 221-2.
Paul III, Pope, 98 and n. 24, 242.
Penalties, *see* Sanctions.
People, *see* Civic Primacy of the People; Sovereignty of the People.
Pepin, 76 n. 1, 246.
Petre, M. D., *see* George Tyrrell.
Petrovits, J. J. C., 225 n. 3.
Philippine Islands, 8, 92 n. 13.
Pierce (Gov. of Oregon) *vs.* the Society of Sisters and *vs.* Hill Military Academy, 264.
Pisa, General Council of, 166-7.
Pius V, Pope, 72, 98.
Pius VII, 91 n. 9.
Pius IX, Pope, 35, 57, 73, 76, 78, 81, 91 n. 9, 120 n. 5, 165, 171 n. 59, 184, 212, 217, 228, 233-4, 247.
Pius X, Pope, 27, 147 n. 28, 251-2.
Pius XI, Pope, 34, 252, 279, 280.
Plato, 181.
Plebiscite, 79.
Pohl *vs.* State of Ohio, 263.
Pohle, Joseph, Dr., 131, 191-2, 195-6.

Pole, Cardinal, 46.
Police Power of the State, 120 n. 6, 203-4, 207-9, 229, 262.
Politics and Religion, 1, 3-5, 244-257.
Pollard, A. F., 241 n. 27.
Polygamy, *see* Mormon Church.
Ponce, City of, *vs.* the Roman Catholic Church, 8 n. 15, 185 n. 8, 221 and n. 27.
Pontifex Maximus, 5, 182.
Pontiff, Roman, 16, 31, 33, 59, 61, 99, 110-111, 164, 173, 190, 193, 218, 247 n. 8, 279.
Pontius Pilate, 11.
Pope, deposing power of, 71, 140.
  election of, 16 n. 1, 154-7.
  power of, 16, 24 and n. 14, 25, 29 n. 26, 36 and n. 43, 39, 40, 59-62, 66, 70, 75 n. 42, 94 and n. 16, 150-153, 164, 171 and n. 59, 172-9, 246-7, 249.
  see also Bishop of Rome.
Power, immediate, 61-2.
  irresponsible, 19, 35, 280.
  limitations of, 35.
  ordinary, 61-2.
  plenary, 29 n. 26.
  responsible, 19, 35, 280.
  to loose and to bind, 7, 24.
  see also Jurisdiction, Primacy, Sovereignty, Supremacy, Two Powers.
Præclara Gratulationis Publicæ, 21 n. 9, 94 n. 15.
Presbyterian theory, 10, 132.
Prescription, 244-5.
Press, freedom of, 103, 105.
Priests, *see* Clergy.
Primacy of Honor, 58, 280.
  of Jurisdiction, 33, 58, 68, 154, 280.
  Scriptural, 6, 58, 145.
  see also Jurisdiction; Power.
Princes, German, 146, 259.
Privilegium, 173-5, 177-8.
  see also Dispensations.
Profession of faith, 36, 59, 60, 75.
Propaganda, right of, 214-222, 262.
Property, 92 n. 13, 204, 211-222.
Proscription of sects, 128, 133.
Protestants, 38, 59, 92, 119, 122, 199, 234.
Providentissima Mater Ecclesia, 169 n. 52.
Punishment, *see* Sanctions.
Purgatorio, 7.

Quanta cura, 81, 212 n. 5.

Ranke, L. von, 242 n. 33.
Raulx, M. L'Abbé, 81 n. 12, 218 n. 22, 233 n. 16.
Raymond, Henry J., 17 n. 2, 136 n. 14.
Reformation, 183, 224.
  counter-, 146.
Religion, only one true, 95, 107, 122-3, 127, 129, 130-1, 143.
  public profession of, 95, 104, 115-116, 120-1.
  State establishment of, 10, 55, 107, 118 and n. 3, 127, 131.
Religion and politics, *see* Politics and Religion.
Renaissance, 183.
Reno, 239.
Revelation, Divine, 8, 9, 24, 43, 46, 179, 188, 230, 239, 247-8, 252, 261.
Rhode Island, 27 n. 17, 118 n. 3.
Riccio, Bishop, 69 n. 24.
Rickaby, John, S.J., 188.
Rickaby, Joseph, S.J., 189 n. 18.
Right to revolt, 39 n. 3, 191.
Rights, inherent, 32, 55, 106, 201, 211-222.

see also Jurisdiction, Power, Primacy, Sovereignty, Supremacy.
Rockwell, William W., Dr., 120 n. 5.
Roman Empire, ancient, 5-7, 152-3, 211.
see also Holy Roman Empire.
"Roman," insertion of, xiii, 3.
Roman Pontiff, *see* Pontiff, Roman.
Roosevelt, President, 92 n. 13.
Ross, J. Elliot, Dr., 20 n. 7.
Rossi, 79.
Ruggles *vs.* State of Illinois, 204 n. 14.
Ryan, John A., Dr., 87-8, 114-147, 198.

St. Ambrose, 29.
St. Augustine, 29.
St. Bartholomew, massacre of, 72, 111.
St. Bruno, 92.
St. Leo, 29.
St. Peter, 33, 58-9, 63, 76 n. 1, 154, 164, 181, 183, 188, 268.
Sanctions, 26-8, 29 and n. 26.
Sapientiæ Christianæ, 31, 190 n. 20, 247 n. 8.
Schism, Great, 166.
Lutheran, 165.
Schmalkald, 191 n. 22.
Schneemann, 27.
Schools, *see* Education.
Schrader, 27.
Schreckenbach, P., 146 n. 26.
Scottish Church, 10.
Scripture, interpretation of, 171.
Sectarianism, 11, 138.
Sects, 40 n. 5, 128.
Sedition, 39.
Sermon on the Mount, 11.
Sherman Anti-Trust Law, 203.
Shuster, George N., 178 n. 78.
Sillon, Le, 250-252.
Sixtus V, Pope, 99.
Skeptics, 44, 77, 185, 194.
Slavery, 43.
Smith, Hon. Alfred E., 43 n. 8, 44 n. 10, 54 n. 25, 80 n. 10, 90 n. 7, 109 n. 32, 129 n. 10, 176-7, 178 n. 78, 196, 276 n. 27.
Smith, Preserved, 146 n. 25.
Societas Perfecta, see Societies, perfect.
Societies, perfect, 10, 17-8, 32, 96.
religious, 18, 182, 204.
revolutionary, 139.
supernatural, 18, 96.
Society, Christian, 6 and n. 10, 148-9.
human, 143-147.
organic, 9 and n. 10.
Society of Friends, 202.
Socrates, 181.
Solidarity, Roman Catholic, 17, 38, 41-3, 106, 110, 124, 136, 141, 143, 248, 250, 253.
Sovereignty, category of, 15, 40.
conception of, 15, 17 n. 3.
definition of, 17.
of the people, 41, 107, 138-140, 179.
pontifical, 6, 30 and n. 27, 76, 77, 80, 107, 126.
religious, 8, 10-12, 15, 19, 21, 30, 36, 45, 59, 96, 106, 123, 134, 139-142, 176, 188, 209, 230, 243.
royal, 30.
State, 19, 280.
temporal, 76-80, 147.
territorial, 17.
see also Civic Primacy of the People; Jurisdiction; Power; Primacy; Supremacy.

Spain, 8, 79, 92,, 120 n. 5, 240.
Speech, freedom of, 105, 120, 143.
Standard Oil Co. *vs.* United States, 203.
State, Austinian, 134, 136.
Catholic, 53, 54 and n. 25, 123-4, 128, 131, 143.
Hegelian, 134, 136.
nullification, 43, 56, 139, 229.
peace and safety of, 204-208.
State and Church, 1, 5, 7, 8, 11-2, 15, 17-8, 21-2, 26, 34, 36-56, 68, 93-4, 102, 106, 108, 112, 117, 121, 126, 129, 131, 134, 147-8, 157-8, 162, 186, 198-9, 200-2, 208-9, 211, 229, 248, 250, 252, 261-2, 268-278.
States of the Church, 76-8, 80, 245, 247-8.
States, national, 7, 25.
Strossmayer, Bishop, 69 n. 24.
Summa Theologica, 29 n. 24.
Supremacy, 21, 57, 61, 63-6, 71. *see also* Primacy; Power; Sovereignty.
Swords, Two, 24 n. 16, 98.
Syllabus of Pope Pius IX, 27, 33, 76-87, 165, 212, 228, 234.
Sylvester I, Pope, 179, 259.

Taft, Hon. William H., 8.
Taney, Chief Justice, 44.
Taxation, 138.
Teaching, *see* Education.
Temporal Power, *see* Sovereignty, temporal.
Thanksgiving proclamations, 120.
Tolerance, 44, 132-3, 144.
Toleration, 118 n. 3, 127, 129, 143, 191-7.
Torture, 29 n. 24.
Tradition, 35, 170, 171 and n. 59, 190.
Treason, 45.
Trent, Council of, 146.
Tribute Money, 5, 11, 183.
Trinitarian Baptism, 227 n. 7.
Trinity, 279 n. 1.
Truth, 130, 144.
Tudor, Mary, 46.
Twilight Zone, 23, 198-210.
of Education, 258-278.
Inherent Rights, 211-222.
Marriage, 223-243.
Politics, 244-257.
Two Powers, 5, 7, 23 and n. 13, 24 n. 16, 97, 99, 100-1, 107, 117, 161, 201, 209.
Tyrrell, George, 9, 11, 147 n. 28, 166.

Ultramontanism, 73, 82, 187 n. 11.
Unam Sanctam, 24 and n. 16, 28, 66 n. 17, 98.
Union of Church and State, *see* State and Church.
United States of America, 7, 12-3, 39, 99, 110, 116, 121, 125-6, 177, 199, 203, 209, 242.
Constitution of, 7, 44-5, 54, 101, 103, 105, 109, 116, 118 n. 3, 119, 121, 132, 176, 178, 205, 214, 220.
United States *vs.* Northern Securities Co., 203.
Urban II, Pope, 72, 260.
Urbino, Duke of, 242.
Usurpers of Church goods, 138, 209, 246.

Vacante Sede Apostolica, 156 n. 26.
Vatican Council of 1870, 9, 30, 33, 35 n. 42, 57, 73-4, 79, 87, 91, 152 and n. 13, 165, 169, 279 and n. 1.
Vattman, Father, 92 n. 13.
Vaughan, Herbert M., 156 n. 27.
Venerabilem, 24 n. 15, 98.

Vicar of Christ, 16, 21, 22 and n. 12, 26, 29 n. 26, 68, 76, 146, 183, 231, 252, 261, 268, 276-7.
of God, 16, 22 and n. 12, 104, 191, 193.
Vicariate of Christ, 182.
of Emperor, 24.
of Pope, 24.
Vicegerent of God, 16, 94, 182, 261, 276-7.
of Christ, 16.
Victor Emmanuel II, King, 80, 201, 234.
Virginia Statute of Religious Freedom, 118 n. 3, 280.

War, 112.
Watson *vs.* Jones, 205.
Welfare, public, 144-147.
Westphalia, Treaty of, 7, 99, 186, 201.
Wills, synthesis of free, 12, 36. *see also* Civic Primacy of the People; Sovereignty of the People.
Wilmers, W., 274 n. 24.
Wilson, Woodrow, 118 n. 3.
Wirgman, A. T., 6 n. 11.
Worship, 110, 119, 128, 138.
Woywod, Rev. Stanislaus, 16-7, 31 n. 32, 156 n. 26, 226, 227 and n. 7, 234 n. 19, 266 and n. 20.

Young, G. F., 242 n. 33.
Youth, education of, *see* Education.

Zelo domus Dei, 99, 186, 187 n. 13.

By the Same Author

GOVERNOR SMITH'S AMERICAN CATHOLICISM

Including

Mr. Marshall's *Atlantic Monthly* Letter and his Rejoinder to Governor Smith's Reply.

A notable consideration of that reply as a bold declaration of personal convictions of great significance in the question of Church and State.

The relation of the Roman Catholic Church to the State, examined

(a) In the light of the electoral character of modern State government and the obedience owed by Roman Catholic voters to the Pope in all matters relating to morals;

(b) In the light of the N. Y. statute incorporating the Roman Catholic Archbishopric of New York and vesting its vast properties in trustees appointed by the Pope;

(c) In the light of the effect of the Pope's action on political life in France in the episode of *Action Française.*

"American" Catholicism and Roman Catholicism: their antithesis and present irreconcilability discussed.

At all booksellers Price $1.00 Postpaid $1.10

DODD, MEAD & COMPANY

449 Fourth Avenue New York City

WITHDRAWN FROM KENT STATE
UNIVERSITY LIBRARIES